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Agenda item 117
Implementation of the resolutions of the United Nations

Letter dated 5 November 2009 from the Permanent Representative of China to the United Nations addressed to the Secretary-General

During the general debate of the sixty-fourth session of the General Assembly held from 23 to 29 September 2009, Tuvalu, Gambia and a very few other countries raised the so-called issue of "Taiwan's participation in the United Nations specialized agencies" in their statements. I am instructed to state the following positions of the Chinese Government on this issue:

1. By advocating the so-called "two Chinas" and "one China, one Taiwan" at the United Nations podium, Tuvalu, Gambia and a few other countries have violated the purposes and principles of the Charter of the United Nations, infringed on China's sovereignty and territorial integrity and interfered in China's internal affairs. Their action, which runs counter to the efforts of the Chinese people across the Taiwan Strait to sustain the good momentum for peaceful development of cross-Strait relations, is firmly opposed by the Chinese Government and people.

2. There is only one China in the world, and Taiwan is an inalienable part of China. The mainland and Taiwan are not yet reunited, but the fact that the two sides belong to one and the same China remains unchanged, and will never change. The Chinese Government is committed to maintaining the peaceful development of cross-Strait relations and promoting the welfare of people across the Taiwan Strait. However, our firm position of adhering to the one China principle and opposing "two Chinas", "one China, one Taiwan" and "Taiwan independence" will never change.

3. General Assembly resolution 2758 (XXVI) adopted in 1971 has resolved the issue of China's representation in the United Nations once and for all, politically, legally and in terms of procedures. The United Nations specialized agencies have also resolved the issue of China's representation in accordance with the Charter of the United Nations and General Assembly resolution 2758 (XXVI). The United Nations and its specialized agencies are intergovernmental organizations composed only of sovereign States. All the parties to the United Nations Framework Convention on Climate Change are either United Nations Member States or regional economic integration organizations composed of sovereign States. Tuvalu, Gambia and a few other countries, in disregard of the fact that Taiwan is part of China,

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trumpeted the so-called Taiwan's "participation" in the International Civil Aviation Organization and the United Nations Framework Convention on Climate Change. This is unacceptable. We strongly oppose any attempts aimed at creating "two Chinas" or "one China, one Taiwan", and undermining the peaceful development of cross-Strait relations.

4. People across the Taiwan Strait share the same blood and destiny. The Chinese Government places great emphasis on the well-being of the 23 million Taiwan compatriots and is always committed to safeguarding the Taiwan compatriots' legitimate rights and interests across the world. We understand the feeling of our Taiwan compatriots about participating in the activities of international organizations, and attach great importance to solving this issue. Taiwan compatriots' participation in the activities of international organizations is an internal affair of the Chinese people, and can be arranged in a fair and reasonable manner through pragmatic cross-Strait consultation on the premise of not creating "two Chinas" or "one China, one Taiwan".

5. The Chinese Government hopes that the countries concerned will do more to contribute to the peaceful development of cross-Strait relations, and refrain from acts that harm the interests of China and hurt the feelings of the Chinese people. We are convinced that the Chinese Government and people will continue to have the understanding and support of the United Nations and its Member States in its effort to safeguard sovereignty and territorial integrity, promote the peaceful development of cross-Strait relations and achieve the great cause of peaceful reunification.

I have the honour to request that the present letter be circulated as a document of the sixty-fourth session of the General Assembly, under agenda item 117.

(*Signed*) **Zhang** Yesui
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and Permanent Representative of the
People's Republic of China to the United Nations

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Sixty-fourth session
Agenda item 32
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan

Report of the Secretary-General

Summary

The present report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 63/97, in which the Secretary-General was requested to report to the Assembly at its sixty-fourth session on the implementation of the resolution. The period covered by the report is September 2008 to August 2009.

The report addresses the continuation of Israeli settlement activities in the occupied Arab territories and its impact on the human rights of the residents.

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I. Introduction

1. In its resolution 63/97, the General Assembly expressed grave concern about the continuation by Israel, the Occupying Power, of settlement activities in the Occupied Palestinian Territory, in violation of international humanitarian law, United Nations resolutions and agreements reached by the parties, particularly about Israel's construction and expansion of settlements in and around East Jerusalem. It also expressed concern about the dangerous situation resulting from violent actions taken by armed Israeli settlers in the Occupied Palestinian Territory.

2. Furthermore, the General Assembly, in the same resolution, reaffirmed that the Israeli settlements in the Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan were illegal and called upon Israel to strictly comply with its obligations under international law, including international humanitarian law, with respect to the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem. In addition, the resolution reiterated its demand for the complete and immediate halt of all Israeli settlement activities, including in East Jerusalem and the occupied Syrian Golan.

3. The General Assembly also called for the prevention of all acts of violence and harassment by Israeli settlers, especially against Palestinian civilians and their properties and agricultural lands, and stressed the need for the implementation of Security Council resolution 904 (1994), in which the Council called upon Israel to continue to take and implement measures, including confiscation of arms, aimed at preventing illegal acts of violence by Israeli settlers. The resolution also called for measures to be taken to guarantee the safety and protection of the Palestinian civilians in the occupied territory.

4. The present report addresses progress made in the implementation of resolution 63/97 concerning, specifically, Israeli settlement activities in the occupied territories, as well as violence by Israeli settlers. Other relevant issues referred to in the resolution are covered by the report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory (A/64/517).

5. The preset report needs to be read in conjunction with the previous report of the Secretary-General on this question (A/63/519). Such issues as the confiscation of land, the wall, the bypass and prohibited roads and checkpoints presented previously are not repeated here. The previous report also provided the historical background of the issues of Israeli settlements. The present report provides an update on the settlements and highlights additional concerns. The report relies heavily on information made publicly available by the Office for the Coordination of Humanitarian Affairs (see http://www.ochaopt.org).

II. Legal background

A. International humanitarian law

6. The most relevant international humanitarian law standards concerning Israel's responsibilities in the Occupied Palestinian Territory as the Occupying Power are set out in the Fourth Geneva Convention relative to the Protection of Civilian Persons

in Time of War and in the Hague Regulations, which are recognized as part of customary international law.[1]

7. Article 49 of the Fourth Geneva Convention stipulates specifically that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". Israel's continued settlement activities are in flagrant violation of this provision, as confirmed by the International Court of Justice in its advisory opinion on the wall. This has also been confirmed repeatedly by a number of United Nations resolutions, including, most recently, by General Assembly resolution 63/97 and Human Rights Council resolution 10/18.

8. The Hague Regulations prohibit an occupying power from undertaking permanent changes in the occupied area unless they are due to military needs in the narrow sense of the term or unless they are undertaken for the benefit of the local population. The occupying power must refrain from changing the character, status or demographic composition of the occupied territory. It is also bound to protect the rights of protected persons in occupied territories. In addition to the construction of the settlements themselves, other settlement-related activities, such as the confiscation of land, the destruction of houses and orchards, the construction of roads meant for settlers only and the exploitation of natural resources, including water, within the occupied territory and altering the character and status of the Occupied Palestinian Territory, are also prohibited by international law. Concerns over the use and depletion of natural resources as a result of settlements have been raised by the international community on numerous occasions.[2]

B. International human rights law

9. Israel has ratified several of the most important international human rights treaties, including the International Convention on the Elimination of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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[1] In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004 (see A/ES-10/273 and Corr.1), the International Court of Justice concluded that the Fourth Geneva Convention was applicable in the Palestinian territories which, before the 1967 conflict, lay to the east of the Green Line and which, during that conflict, were occupied by Israel. Since then a significant number of United Nations resolutions have reaffirmed the applicability of the Fourth Geneva Convention, the most recent being Human Rights Council resolutions S-9/1 and 10/18 and General Assembly resolutions 63/96, 63/97 and 63/201. In its advisory opinion, the Court recalled that while Israel was not a party to the Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), to which the Hague Regulations are annexed, the provisions of the Hague Regulations had become part of customary international law.

[2] See various General Assembly resolutions, including 63/201. Also see Security Council resolution 465 (1980), whereby the Council, taking note of the reports of the Commission of the Security Council established under resolution 446 (1979) to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, expressed its concern and requested the Commission to continue to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, and to investigate the reported serious depletion of natural resources, particularly water resources, with a view to ensuring the protection of those important natural resources of the territories under occupation.

the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

10. In its advisory opinion on the wall, the International Court of Justice affirmed that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child were applicable in respect of acts carried out by and legal obligations of Israel in the Occupied Palestinian Territory (see A/ES-10/273, paras. 102-113). The position of United Nations human rights treaty bodies mirrors that of the International Court of Justice, namely, that as a party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights obligations in the Occupied Palestinian Territory under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of Racial Discrimination to the extent that it continues to exercise jurisdiction in those territories.[3] The Court also noted that Israel's obligations under the International Covenant on Economic, Social and Cultural Rights include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities" (A/ES-10/273, para. 112).

11. Israel's establishment of settlements in the Occupied Palestinian Territory has affected numerous rights of Palestinian residents that are enshrined in international human rights law. In particular, the Government of Israel has imposed severe restrictions on the freedom of movement of Palestinians in the vicinity of the settlements, including through the building of the wall, checkpoints, road closures and a road network open only to settlers and Israeli citizens. Those restrictions on freedom of movement have in turn generated violations of a wide range of other human rights, such as the right to education, the right to work, the right to an adequate standard of living, the freedom of religion and the right to the highest attainable standard of health, which, as mentioned above, are dealt with in more depth in another report (A/64/517).

III. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and their impact on the enjoyment of human rights

A. Overview

12. As noted in the previous report of the Secretary-General to the General Assembly (A/63/519), settlements represent an obstacle to the creation of the future Palestinian state. The Government of Israel committed itself, under phase I of the road map, to freeze all settlement activity from March 2001 (S/2003/529, annex). This was consistent with the recommendation contained in the report of the Sharm

[3] An examination of the concluding observations of different United Nations treaty bodies confirms this view. See A/HRC/8/17, para. 7; CERD/C/ISR/CO/13, para. 32, CRC/C/15/Add.195, CAT/C/ISR/CO/4, para. 11, and A/60/38, part two, paras. 221-268.

el-Sheikh Fact-Finding Committee of 2001, which stated that Israel should freeze all settlement activity, including the so-called "natural growth" of existing settlements, and that the kind of security cooperation desired by Israel could not be reconciled with settlement activity.

13. Despite the commitments made by the Government of Israel to cease settlement activity and international calls to halt expansion, settlements in the Occupied Palestinian Territory continue to expand in violation of Israel's obligations under international humanitarian law. The Office for the Coordination of Humanitarian Affairs reports that by the end of 2008, about 485,800 settlers were residing in 121 settlements in the West Bank, including 195,000 in 12 settlements in East Jerusalem. Statistics indicate that in 2008 the settler population, excluding in East Jerusalem, grew by 4.6 per cent, a much faster rate than the general population elsewhere in Israel (1.6 per cent). According to the Israeli non-governmental organization B'Tselem, some 40 per cent of the growth in the settler population outside of East Jerusalem was the result of persons emigrating from elsewhere in the world or Israel, as opposed to natural growth.

14. As at June 2009, some of the major construction projects in progress included those in Ma'ale Adumim and Giv'at Zeev Illit (around East Jerusalem), where around 900 and 800 housing units, respectively, were being built. Hundreds of other housing units are being constructed in Beitar Illit and Modin Illit. In more than 22 other settlements in the West Bank, construction ranging from the building of 1 or 2 to 50 villas is actively being carried out.

15. Despite a policy of the Government of Israel that settlements should not be built on privately owned Palestinian land, there is evidence, reported by the non-governmental organization Peace Now, that this is not always the case and that land owned privately by Palestinian residents of the Occupied Palestinian Territory has been expropriated for the building of settlements. An illustrative example is that of Ofra settlement, populated by 2,700 persons some 24 kilometres east of the Green Line (i.e. inside the occupied territory), of which some 60 per cent of land had already been registered to Palestinian residents before 1967.

16. In practice, large swaths of land around settlements are often de facto closed off to Palestinian residents, either by the Government of Israel or by the settlers themselves with the tacit approval of the Israeli security forces. While this had been occurring for many years, it was further institutionalized by the Government of Israel in 2002 through the "special security area" framework, by which closed areas 300 metres wide (later expanded to 400 metres) are established around many settlements. In March and April 2008, B'Tselem obtained from the Government of Israel information showing that, as a result of those measures having been taken around 12 settlements, their overall area had increased from 3,235 dunams to 7,794 dunams. More than half of the land that has reportedly been effectively expropriated under this framework is private land owned by Palestinians. In some cases, such as Ma'ale Adumim, 86 per cent of the lands on which settlement units are built are privately owned.

17. Peace Now recently reported that the Government of Israel was planning to construct at least 73,300 housing units in the West Bank, 15,000 of which had received final governmental approval. Close to 5,700 of those units are reportedly to be constructed in East Jerusalem.

18. In addition to settlements, there are currently around 100 "outposts" throughout the West Bank. Outposts are settlements that are not authorized by the Government of Israel and are therefore illegal under Israeli law, in addition to being illegal under international law. Nevertheless, the establishment of new outposts continued over the past year. In some of those, including Kida, Toka B and C, Lehavat Yitzar, Givat Harel, Ahiya and Neve Daniel North in the West Bank, permanent structures are being built, while the extensive expansion of factories in the industrial area in Areil and Barkan (central West Bank) is also being carried out.

19. According to the Office for the Coordination of Humanitarian Affairs in response to concerns raised by several States, the Government of Israel announced in May 2009 that it would dismantle outposts existing in various locations in the West Bank.

20. Although the existence and expansion of settlements affects nearly all Palestinians in the Occupied Palestinian Territory, the most vulnerable are the Bedouins in Area C, many of whom are refugees from the Negev. As herders and livestock owners, they are prevented from grazing their animals within 3 kilometres of nearby settlements in many areas and have frequent demolitions carried out against them by Israeli security forces[4] or the Israeli civil administration. Generally, Bedouins are becoming increasingly vulnerable and dependent on externally funded projects, which provide them with basic needs such as water and dry fodder.

B. Settlements in East Jerusalem

21. Between 1948 and June 1967, Jerusalem was divided in two: West Jerusalem, which consisted of an area of about 38 square kilometres, was under Israeli control, and East Jerusalem, which contained an area of some 6 square kilometres, was under Jordanian control (as was the rest of the West Bank). In June 1967, following the 1967 war, Israel annexed some 70 square kilometres beyond the municipal boundaries of West Jerusalem, on which it imposed Israeli law.

22. International law prohibits the annexation of territory occupied pursuant to an armed conflict.[5] Israel's annexation of East Jerusalem constitutes a flagrant violation of international law.

23. According to the Office for the Coordination of Humanitarian Affairs, 12 settlements have been constructed in East Jerusalem since its annexation, and the settler population stands at approximately 195,000.

24. In addition to having approved the expansion of settlements in East Jerusalem, the Government of Israel has implemented a number of other policies the result of which is to change the demography of East Jerusalem. In particular, the policies of the Government of Israel regarding urban planning in East Jerusalem, the dispensing of building permits and the demolition of homes built without permits have a

[4] Including border police, Israeli police and Israel Defense Forces.

[5] Article 2, paragraph 4, of the Charter of the United Nations, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) and Security Council resolution 242 (1967) which emphasized the inadmissibility of the acquisition of territory by war.

discriminatory impact on Palestinian residents of East Jerusalem.[6] Furthermore, according to B'Tselem, the revocation of residency and social benefits of Palestinian residents who stay abroad for a continuous period of seven years or who are unable to prove that they reside in East Jerusalem are also discriminatory and are clearly aimed at ensuring that the maximum number of Palestinians leave the city (see, e.g., CERD/C/ISR/CO/13, para. 20). Those policies and practices are in violation of human rights obligations on non-discrimination, in particular as elaborated in article 2 of the International Covenant on Civil and Political Rights; articles 2 and 5 of the International Convention on the Elimination of Racial Discrimination and article 2 of the International Covenant on Economic, Social and Cultural Rights. They also affect the right to self-determination, guaranteed under article 1 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. In addition, those policies affect a number of other human rights of the Palestinian residents of East Jerusalem, such as their right to adequate housing (article 11 of the International Covenant on Economic, Social and Cultural Rights) and their right to privacy and family life (articles 17 and 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights).

25. In addition, the Government of Israel has been planning to construct a new settlement between Ma'ale Adumim (a large settlement 14 kilometres east of Jerusalem housing approximately 33,000 people) and East Jerusalem. The proposed settlement (commonly known as the E1, for "East 1" plan) consists of around 3,500 housing units for approximately 15,000 people, as well as commercial areas and tourism buildings. This would reportedly entail the removal of close to 2,700 Jahalin Bedouins, who live a traditional semi-nomadic life in the area. According to the Office for the Coordination of Humanitarian Affairs, all of the West Bank east of Ma'ale Adumim has been declared a closed military area by the Israeli military, and access is prohibited to all Palestinians.

IV. Israeli settler violence in the Occupied Palestinian Territory

26. Violent acts by settlers against the Palestinian population of the Occupied Palestinian Territory continued. Data compiled by the United Nations Office for the Coordination of Humanitarian Affairs indicates that settler-related incidents[7] have increased significantly over recent years. The Office documented 391 such incidents in 2008, as compared with 243 in 2007 and 182 in 2006. The number of Palestinians killed or injured as a result of settler violence also increased significantly, from

[6] For example, the land available for Palestinians in East Jerusalem for the construction of houses is a mere 13 per cent of East Jerusalem, much of which is already built up. Even there it is difficult to obtain permits. Also, the density, known as the plot ratio, permitted is half, or in some cases much less than half, that found in neighbouring Israeli settlements in East Jerusalem, or in West Jerusalem, thus limiting the possibility of housing for Palestinians. Between 1996 and 2000, for example, the number of recorded building violations was four and a half times higher in Israeli areas (17,382 violations) than in the Palestinian areas of East Jerusalem (3,847 violations). In spite of this, the number of demolition orders issued in West Jerusalem was merely one fourth (86 orders) the number in East Jerusalem (348).

[7] Including violence committed by settlers against Palestinians as well as other violations, such as the damaging of Palestinian property and trespassing.

74 in 2006 to 92 in 2007 and 195 in 2008.[8] In 2008, the Office noted that a significant majority of such violent acts had been carried out by groups of settlers as opposed to individuals, as had generally been the case before 2006.

27. The Office also reports that settler-related incidents in 2009 are continuing. It notes that the number of violent acts resulting in Palestinian casualties in 2009 may be slightly lower compared with 2008. On the other hand, the number of Palestinian persons injured by settlers remains at the high level of 2008, with 269 settler-related incidents as at September 2009 41 of which resulted in the injury of 108 Palestinians.[9] Israeli settlers living in many areas have a special dispensation regarding the owning and carrying of firearms, and many settlements maintain their own volunteer paramilitary forces, some of which are heavily armed.

28. The Office for the Coordination of Humanitarian Affairs reports that as at December 2008, approximately half of all Palestinian injuries from settler violence were suffered by women and children. Defence for Children International — Palestine Section, an international non-governmental organizations, documented 25 cases of settler violence directed at children from early 2008 to August 2009.[10] Settlers often commit violent acts against Palestinian residents with impunity. The Office for the Coordination of Humanitarian Affairs reported in 2008 that the majority of settler incidents recorded since 2006 had been committed by groups of Israeli settlers against Palestinian civilians as they performed their daily tasks — walking to school or to market, grazing their livestock, tending their fields or harvesting their crops. Children as young as 8 years old and elderly people as old as 95 have been targets of attacks. The full extent of settler violence is difficult to capture in part because settler harassment has become such a routine part of life for some Palestinians. Many incidents go unreported unless they have a significant result. In some areas, such as in the part of Hebron city under Israeli control or in the villages surrounding Yitzhar settlement in the Nablus governorate, the Office has recorded routine settler harassment and intimidation of Palestinian civilians by means of a variety of techniques, from the threat of force to its actual use.

29. **Recent events in the Palestinian village of Safa (Hebron) and the Bedouin community of Umm al-Khayr (southern West Bank) are illustrative.[11] Safa is bordered by the Israeli settlements of Bat Ayin to the north and Gush Etzion to the north-east. Following a murder that took place in the centre of Bat Ayin settlement by an unknown assailant on 3 April 2009, at about 2200 hours, dozens of Israel security forces entered Safa from different directions, using megaphones to order all men in the village to come out to the street. Several Palestinians were beaten by Israeli security forces and some were arrested. Several days later, on 8 April, settlers from both settlements, escorted by**

[8] It should be noted that these data rely on the monitoring efforts of the Office for the Coordination of Humanitarian Affairs and are not necessarily comprehensive.

[9] In 2008, 3 settlers were killed and 27 were wounded over the course of 2008 by Palestinians. The International Crisis Group notes that the presence of settlements also generates Palestinian violence; international observers and settlers report recent Palestinian attacks, including drive-by shootings, Molotov cocktails, bombs at settlement gates and a series of stabbings.

[10] In one case, for example, a lone 15-year-old boy was reportedly assaulted, for no apparent reason, by a group of more than 20 settlers.

[11] These are only a few of several cases that the United Nations is monitoring that illustrate the extent of the violations occurring to Palestinians owing to settlements and settlers' violence. For case studies see A/HRC/12/37 and A/HRC/12/48.

troops, gathered to the north and east of Safa. Both the settlers and Israeli security forces opened fire at Palestinian civilians with firearms, sound bombs and tear gas canisters. The attacks continued for 90 minutes, peaking when troops broke into the village and raided houses, wounding nine Palestinian civilians (see A/HRC/12/37, paras. 62-70).

30. **The Bedouin herding community of Umm al-Khayr lives on land — parts of which are privately owned by the community — that is in close proximity to several settlements.[12] The Bedouin community currently lives literally within metres of a settlement fence and suffers persistent harassment from settlers, with settler youth often lining up along the fence at night to throw stones and hurl verbal abuse. Security guards of the settlement, together with Israel Defense Forces, regularly make incursions into the village and search houses, claiming that there are "terrorists" planning to attack — despite the fact that there has never been any attack on the settlement. Despite several complaints to the police and the civil administration, in particular over the course of 2008, no serious investigation appears to have been conducted.**

31. **Since the summer of 2008, representatives of the Israeli civil administration, police officers and the security guards of the settlement have on different occasions verbally informed members of the community that they would no longer be allowed access to the area of the surrounding land that constitutes the bulk of their grazing land. Israel Defense Forces are now regularly positioned on top of one of the hills that is currently off limits to members of the community, ensuring that they are unable to have access to the area and are forced to take a long, roundabout route to graze their livestock.**

32. **Furthermore, a new security road that is currently under construction around Karmel settlement passes only 50 metres from the community's main water cistern. The community is denied access to the cistern while daily work on the road is carried out. Finally, the community has been subject to home demolitions. Most recently, on 29 October 2008, six homes and one food store were demolished, displacing 57 persons (including 28 children). The stated reason for the demolition was that the buildings concerned did not have building permits, which are nearly impossible to obtain in Area C. The information available to the Office of the United Nations High Commissioner for Human Rights indicates that in 2007, more than 90 per cent of applications for building permits in Area C were rejected (see A/HRC/12/37).**

33. In May 2008, Yesh Din, an Israeli non-governmental organization, published figures indicating that only 8 per cent of complaints involving settler-related incidents resulted in indictments. Some 87 per cent of assault complaints filed were reportedly closed without indictment. Overall, 92 per cent of cases involving criminal trespass, seizure of land and damaging of Palestinian crops were closed with no further action taken. Not a single property damage complaint was closed with an indictment. Although those figures rely on Yesh Din's monitoring efforts and are not comprehensive, Yesh Din states that no official body maintains comprehensive data on such investigations. The overwhelming majority (94 per cent) of the cases monitored by Yesh Din were closed owing to failures in the

[12] Until 2000, many members of the community performed labour in Israel and earned income. However, as restrictions on holders of West Bank identification entering Israel increased, this became impossible, and now the raising of livestock is one of the main sources of income.

investigation, such as failing to identify the perpetrator or to collect sufficient evidence. Yesh Din documented several cases in which the effort put into the investigation of serious crimes committed by settlers fell seriously short of that required to hold alleged perpetrators accountable and combat impunity. They included cases in which victims' complaints and testimonies were recorded in Hebrew rather than Arabic (the language in which the testimonies was given) and cases in which the police investigators did not visit the crime scene or when testimonies were not collected from key witnesses. According to Yesh Din, in a number of cases a decision was made to close the investigation even though there was sufficient prima facie evidence to prosecute the suspects. In one case, the police failed to conduct any investigation into the alibi of one settler whose identity card had been found at the scene of vandalized Palestinian crops.

34. In July 2009, in a letter from the Ministry of Justice to the Office of the United Nations High Commissioner for Human Rights, the Ministry stated that in 2007, 491 investigations against Israeli settlers for "disturbances of peace" were opened in the West Bank, leading to 57 indictments against 73 persons. In 2008, 525 investigations were opened, leading to 106 indictments against 140 persons.

35. Even when Israeli security forces are present at the scene, the information gathered by non-governmental organizations while carrying out field monitoring and collecting testimony suggests that their intervention to protect Palestinian residents is rare. Settlers are rarely arrested for committing violent acts. Numerous cases have also been documented in which the Israeli security forces facilitates, or even participates in, violence by settlers.[13]

36. There have been instances in which settlers were prosecuted. B'Tselem reports that in December 2008, a resident of the Yitav settlement in the north-eastern part of the West Bank was sentenced to 16 months of imprisonment after shooting and paralysing for life an unarmed Palestinian civilian. On the other hand, even in high-profile cases where there is incontrovertible evidence against the settler, effective prosecution and sentencing can be lacking. In July 2009, the Israeli Prosecutor's office reportedly stated that it would drop charges against a settler who had been caught on film shooting at Palestinians at close range during the aforementioned incident in December 2008. Although the settler had initially been charged with intention to cause grievous bodily harm, the Prosecutor's office refrained from pursuing the prosecution, stating that doing so might result in the revealing of secret evidence.

[13] In one case documented by Defence for Children International — Palestine, on 3 April 2009 two Palestinian boys (one 15-year-old and one 16-year-old) were attacked, for no apparent reason, by three Israeli border police officers and a settlement security guard in a field near Ma'on settlement in Hebron. After being chased and assaulted, the two boys were reportedly put in a police vehicle and transported to a nearby checkpoint, where they were taken out of the vehicle, handcuffed, kicked and beaten in front of approximately 20 other Israeli security force troops. The troops then stood by as a group of six or seven settlers, passing nearby, started throwing stones at the boys. The boys were eventually released when representatives from an international non-governmental organizations, which the boys were unable to identify, arrived on the scene and negotiated their release with the troops. In several other cases, settlers have been filmed committing violent acts against Palestinians in the presence, and sometimes even with the participation, of Israeli security forces.

V. Situation of Palestinian workers in Israeli settlements

37. According to the International Labour Organization (ILO), thousands of Palestinian women, men and children work in settlements in the West Bank, mainly in industrial and agricultural areas. It is estimated that some 26,000 Palestinian workers are employed in seven major settlements and industrial zones alone. Working in settlements is in many cases the only viable way to secure a livelihood for many Palestinians; however, as reported by ILO, the Palestinian workers are vulnerable to exploitation and violations of rights.

38. Many of the Palestinians who work in Israeli settlements and industrial zones are exposed to what ILO describes as "hazardous work environments without appropriate occupational safeguard and health measures in place". In addition, the existence of (Palestinian) child labour in Israeli settlements, particularly in numerous agricultural fields of the Jordan valley, is of great concern. ILO estimates that some 1,900 children work in those settlements, including some who perform dangerous work on date plantations, in violation of the Convention on the Rights of the Child, to which Israel is a State party, which states in article 32, paragraph 1, that children have the right to be protected from economic exploitation and from performing any work that is likely to be hazardous.

39. Although Israeli settlers working in settlements are represented by the Israeli national trade union, Palestinian trade unions are prohibited from operating in settlements. This discriminatory treatment has resulted in a situation in which Palestinian labourers are vulnerable to violations of their rights, with far less access to remedies than Israeli workers. While it is possible for a Palestinian worker in a settlement to take legal action against his employer with the aid of an Israeli national trade union, reports indicate that in reality Palestinian workers face far more obstacles in obtaining such assistance than Israeli workers do.

VI. Water resources and pollution

40. As the Occupying Power, Israel is obligated to ensure that the Palestinian population is able to realize its right to an adequate standard of living, the highest attainable standard of health and adequate housing and food, as elaborated in articles 11 and 12 of the International Covenant of Economic, Social and Cultural Rights, including their right to water. As noted by the Committee on Economic, Social and Cultural Rights, "the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. ... The right to water is also inextricably related to the right to the highest attainable standard of health ... and the rights to adequate housing and adequate food .... The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity" (E/C.12/2002/11, para. 3). Moreover, the obligation to guarantee that the right to water is enjoyed without discrimination prohibits any discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.

41. Israel, as the Occupying Power, is also responsible under international law for the well-being, including public health and hygiene, of the occupied population. Article 56 of the Fourth Geneva Convention imposes on the occupying State primary responsibility for ensuring public health and hygiene in order to prevent the spread of disease and epidemics. The obligation to protect water sources is also derived from the occupying State's duty to ensure "public order and safety". This duty includes not only the negative obligation to refrain from harming the local population, for example, by damaging or polluting water sources and their supply, but also the positive obligation to take suitable measures to protect the population from dangers to which it is exposed. Furthermore, the Hague Regulations state that the occupying State "shall be regarded only as administrator and usufructuary" of the natural resources of the occupied territory.

42. The Government of Israel exploits the natural resources in the West Bank for the use of Israeli citizens in Israel and, in particular, in the settlements in the West Bank (see A/64/354). Although much of the West Bank is extremely arid, it is home to significant water resources, including underground deposits. One of the first acts of the Israeli military occupying forces in 1967 was to take control of all water resources and to prohibit any person from owning or establishing a well without prior authorization. The Government of Israel then proceeded to declare the lower Jordan River a closed military zone and destroyed Palestinian pumps and irrigation ditches (see A/40/381). In 1982, Israel placed the water supply system of the Occupied Palestinian Territory (including Gaza) under the control of Mekerot, the Israeli national water company.

43. According to B'Tselem, more than 200 Palestinian communities, with a total of 215,000 inhabitants, are not connected to a running water network and are forced to buy water from private suppliers, using up to 20 per cent of their income for the purchase of water (see, e.g., A/61/500/Add.1). According to the World Bank, per capita, the Palestinian population has access to only about a quarter of the ration of Israelis: West Bank Palestinians had about 123 litres a person daily, while Israelis had 544. Some Palestinians are surviving on as little as 10 to 15 litres a day. At these extremely low levels of consumption in both the domestic and agricultural spheres, Palestinians rank lowest in access to freshwater in the region.

44. The current water crisis for Palestinians in the West Bank is coupled with the problem of wastewater flowing into available natural reservoirs, aquifers and streams that many Palestinians depend on. In August 2008, the Government of Israel reported that by 2007 only 81 out of 121 settlements were connected to wastewater treatment facilities, which resulted in 5.5 million cubic metres out of a total of 12 million cubic metres of wastewater from settlements flowing into West Bank streams and valleys. Of the 81 treatment plants that exist in the settlements, many of them are inadequate, and high maintenance costs mean that their operation is often defective. In some large, well-established settlements, most of which were built in the 1970s and the 1980s, wastewater is not treated at all, or treatment systems have been neglected for decades. The Ministry of Environmental Protection has reportedly stated that it has plans for treating settlement wastewater, but as yet no scheduled completion date has been provided.

45. Since most settlements are located on ridges and hilltops, their untreated wastewater flows to nearby Palestinian communities, which are generally located

further down the slope. A Palestinian study showed that crops and water sources of 70 Palestinian villages near settlements were contaminated.

46. The Israeli national water company reportedly reduces the water supply to Palestinian communities substantially during the summer months,[14] causing considerable water shortages, to meet increased consumption needs in Israel and in Israeli settlements in the West Bank.

47. It should be noted that the exploitation of natural resources of the West Bank is by no means confined to water. In March 2009, Yesh Din petitioned the Israeli High Court to rule that the extensive mining operations in the West Bank were illegal and should be halted. As one of the bases of their petition, the non-governmental organization used a Government of Israel report that stated that the annual gravel yield in Area C of the West Bank was a total of some 12 million tons a year and that most of the quarries were owned by Israeli companies and mainly marketed the product in Israel (some 74 per cent of the yield).

VII. Settlements in the Occupied Syrian Golan

48. To date, the International Committee of the Red Cross estimates that the Israeli population in the occupied Syrian Golan is between 17,000 and 21,000 living in some 40 settlements. Since the occupation of the Syrian Golan in 1967, the Government of Israel has continued its settlement expansion, despite renewed resolutions calling upon Israel to desist from doing so (see, e.g., General Assembly resolution 63/99). In 2009, the Ministry of Housing reportedly embarked on a plan to increase the population of Katzrin from 6,500 to 20,000 over the next 20 years, and the Israel Land Authority issued 14 tenders for the construction of apartment buildings in Katzrin. In the past years, investments in tourist infrastructure in the occupied Golan reportedly increased.

VIII. Conclusions and recommendations

49. **The Government of Israel should abide by international legal obligations and its pre-existing commitments as stated in the road map, as well as the repeated calls of the international community, namely, to immediately dismantle settlement outposts erected since March 2001 and to freeze all settlement activity, including natural growth, including in occupied East Jerusalem.**

50. The Government of Israel should take action to halt attacks by Israeli settlers against the civilian population of the occupied territory and ensure that a proper investigation is carried out in regard to incidents caused by such settlers and that redress is given to the victims of such violence (see also A/63/519).

51. The Government of Israel should take action to ensure that the labour rights of all Palestinian workers in settlements, including the right to form and join trade unions, are respected. In accordance with article 32, paragraph 1, of the Convention on the Rights of the Child, the Government of Israel should protect children from

[14] The most recent information available, from 2006, indicates that the water supply is reduced from 15 to 25 per cent in the summer months.

economic exploitation and from performing any work that is likely to be hazardous, such as working on date plantations.

52. The Government of Israel should cease to exploit natural resources, including water, in the Occupied Palestinian Territory. In particular, the Government of Israel should take steps to halt the damage being caused to the aquifer in the West Bank and, as the Occupying Power, should ensure non-discriminatory distribution of water resources (see A/64/354).

53. The General Assembly and the international community should actively promote the implementation of its decisions, resolutions and recommendations and those of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures mandate holders.

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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 63/98, in which the Secretary-General was requested to report to the General Assembly at its sixty-fourth session on the implementation of the resolution. The period covered by the report is September 2008 to August 2009.

On the basis of material submitted by the Office of the United Nations High Commissioner for Human Rights, the report describes a number of key aspects of the humanitarian and human rights situation in the Occupied Palestinian Territory.

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I. Introduction

1. The present report addresses progress made in the implementation of resolution 63/98, and specifically highlights:

(a) The humanitarian and human rights situation in the Gaza Strip and Israel;

(b) The policy of closures and severe restrictions on freedom of movement in the Occupied Palestinian Territory;

(c) The wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and its impact on the enjoyment of human rights;

(d) Palestinian house demolitions and forced displacement in Area C and East Jerusalem;

(e) Palestinian child prisoners in Israel.

2. A more comprehensive review of the human rights situation in the Occupied Palestinian Territory can be found in the report of the United Nations High Commissioner for Human Rights (A/HRC/12/37) mandated by the Human Rights Council in its resolution S-9/1. The question of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, is addressed in a separate report (A/64/516) prepared pursuant to General Assembly resolution 63/97. The present report relies heavily on information made publicly available by the Office for the Coordination of Humanitarian Affairs (see http://www.ochaopt.org).

II. Progress in the implementation of the resolution

A. The blockade of Gaza

3. As of August 2009, the blockade of the Gaza Strip entered its third year. In September 2007, subsequent to the Hamas takeover of governmental functions in the Gaza Strip in June 2007, Israel declared Gaza a "hostile territory", closing its borders to exports, severely restricting imports and imposing a travel ban to and from Gaza.[1]

4. On 27 December 2008, following the expiration of the *tahdiya* (the Egyptian-brokered truce between Israel and the Hamas-led government in Gaza) on 19 December 2008, Israel launched Operation Cast Lead. The human rights and humanitarian situation, which was already acute prior to the commencement of Operation Cast Lead, further deteriorated. The consequences of Operation Cast Lead on the Palestinian population of the Gaza Strip have been documented in numerous reports (see, for example, A/HRC/12/37; A/HRC/10/20 and 22; and A/HRC/12/48).

5. The Office for the Coordination of Humanitarian Affairs reports that, as of 22 August 2009, less than 25 per cent of the average weekly amount of humanitarian and non-humanitarian goods allowed into Gaza before the Hamas takeover of June 2007 had entered Gaza. Of those imports, approximately 95 per cent were food and hygiene items, with the remaining 5 per cent consisting of agricultural materials,

[1] See Israel Ministry of Foreign Affairs, press release dated 19 September 2007, "Security Cabinet declares Gaza hostile territory".

medical supplies and non-edible consumables. As reported in the media, in February 2009 the Israeli security cabinet decided that any relaxation in the blockade regime would depend on progress in the negotiations for the release of the captured Israeli soldier Gilad Shalit.[2]

6. Those heavy import restrictions, coupled with a near total prohibition on exports, have had a devastating effect on the Gaza economy. The blockade has also severely impaired the realization of a wide range of economic, social and cultural rights, as well as the civil and political rights of the Gaza population, as described below.

Right to food

7. Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights states that all persons have the right to "an adequate standard of living for himself and his family, including adequate food". The Israeli blockade of Gaza has impeded the flow of goods, including food and, at its peak, created a serious shortage in basic commodities, including wheat flour, meat, canned foods and beverages. A majority of the Gazan population (65 per cent) currently live below the income poverty line, while more than half of those (37 per cent) live in extreme poverty.[3]

8. On 22 March 2009, the Government of Israel announced its decision to allow unrestricted entry of all foodstuffs as long as the source was approved by the Israeli authorities. Nevertheless, while some food products, medical supplies, stationery and industrial/electrical appliances have been allowed, the quantities remain far short of the needs of Gaza's 1.5 million inhabitants.[4] Other food items, including baby formula, tea, some canned food and jam, remained barred even after the Israeli Government's announcement. Finally, it should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself by enjoying an adequate livelihood.

Right to health and right to water

9. Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights states that all persons have the right to the "highest attainable standard of physical and mental health". One element of that right, as noted by the Committee on Economic, Social and Cultural Rights in its general comment No. 15, is the right to water (see E/C.12/2002/11).

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[2] See *Haaretz*, "Hamas: Israel stabbed Egypt in the back over Gaza truce", 18 February 2009. See also Israel Ministry of Foreign Affairs Newsletter, "Statement from PM Olmert's Media Adviser", 14 February 2009, which emphasized that the security of the residents of southern Israel and the release of Gilad Shalit were currently the top priorities and that as such Israel would not reach understandings on a lull before Gilad Shalit's release.

[3] See United Nations Development Programme, "Inside Gaza: attitudes and perceptions of the Gaza Strip residents in the aftermath of the Israeli military operations", February 2009. "Below the poverty line" is defined as households of two adults and four children with a monthly income of NIS 2,000 (US$ 500) or less. Extreme poverty is defined as households of two adults and four children with a monthly income of NIS 1,000 (US$ 250) or less, about NIS 5.5 (US$ 1.375) per person per day.

[4] In the period 2 to 9 March 2009, for instance, the quantities of food supplies allowed into Gaza were estimated at 81 per cent of Gaza's weekly needs. Medical supplies were estimated at 5 per cent, educational stationery goods at 3 per cent and industrial/electrical appliances at 1 per cent.

10. Electricity cuts, together with Israeli attacks on Gaza's water and sewage systems during Operation Cast Lead, left both systems on the verge of collapse; 48 of Gaza's 130 water wells were not functioning due to lack of electricity and damage to pipes. Approximately 45 additional water wells were operating only partially for the same reasons.[5] Restrictions on the entry of construction materials have greatly hampered the repair of those pipelines and water wells. Approximately 10,000 people lack access to the water network, and about 60 per cent of the population do not have continuous access to water.[6]

11. In addition, since sewage treatment plants could not be repaired due to the ban on the import of construction materials, between 50 and 80 million litres of untreated and partially treated sewage have been discharged daily into residential areas and into the Mediterranean Sea since January 2008, causing serious environmental and health problems.[7] According to the World Bank, only 5 to 10 per cent of wells in the Gaza Strip yield safe drinkable water.[8] A recent report by the United Nations Environment Programme warns that Gaza is on the verge of water and sanitation collapse. It identifies as a key concern the increased salinity from salt water intrusion caused by over-abstraction of the ground water, as well as pollution from sewage and agricultural run-off.[9]

12. Available data indicate several worrying trends in the health situation for Gazan residents, including a significant increase in watery diarrhoeal disease, a rise in stunting levels and high levels of anaemia among children 9 to 12 months. A study published in March 2009 by the prominent British medical journal *The Lancet* concluded that Israeli restrictions on the movement of people and supplies into Gaza contributed to a "stunting problem" among children less than five years of age. The study stated that the rate of stunting among children had risen to over 10 per cent following Operation Cast Lead.[10] In addition, current pollution levels in Gaza are such that infants in the Gaza Strip are at risk from nitrate poisoning, causing the so-called "blue-baby syndrome".[11]

13. The Gaza Central Drug Stores reported that of the list of 416 essential drug items and 596 essential disposable items, 72 and 111, respectively, were at zero stock level during June 2009. In addition, difficulties were increasing for patients requiring emergency care to leave Gaza, sometimes resulting in the death of the patients concerned. As of 31 August 2009, the World Health Organization (WHO) confirmed that since the beginning of 2009 22 persons had died as a result of their inability to obtain access to medical treatment outside the Gaza Strip. According to WHO, only 68 per cent of applications to leave Gaza for medical treatment were approved in June 2009, while 30 per cent were delayed and 2 per cent denied.

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[5] See GISH Legal Centre for Freedom of Movement, "Gaza electricity, water and sewage systems on verge of collapse", news release, 4 January 2009.

[6] See United Nations News Centre, "Gaza water crisis prompts United Nations call for immediate opening of crossings", 3 September 2009.

[7] Ibid.

[8] Similarly, according to Amnesty International, 90 to 95 per cent of the water from the only water resource in the Gaza Strip, the Coastal Aquifer, is contaminated and unfit for human consumption.

[9] See United Nations Environment Programme (UNEP), "Environmental assessment of the Gaza Strip following the escalation of hostilities in December 2008-January 2009", September 2009.

[10] See Rita Giacaman et al., "Health status and health services in the occupied Palestinian territory", *The Lancet*, 7 March 2009; a summary of the study appeared in *The Guardian* on 5 March 2009.

[11] See UNEP, loc. cit.

Right to work and to an adequate standard of living

14. The blockade of Gaza has had a drastic impact on the ability of people to work (article 6 of the International Covenant on Economic, Social and Cultural Rights) and maintain an adequate standard of living (article 11). Coupled with the ban prohibiting persons from leaving Gaza, the prohibition of exports and the ban on imports of non-humanitarian supplies has resulted in the near total destruction of the Gazan economy. The Palestinian Central Bureau of Statistics (PCBS) reported that over 140,000 Gazans, willing and able to work, were unemployed in the first quarter of 2009, representing 41.5 per cent of Gaza's workforce (compared to 32.3 per cent in the second quarter of 2007).[12] Unemployment among those less than 30 years old reached almost 60 per cent.

15. The agricultural sector in Gaza was greatly damaged during Operation Cast Lead, compounding an already difficult situation owing to the ongoing blockade of Gaza's borders since June 2007. The Palestinian Authority estimates that, during Operation Cast Lead, 17 per cent of the total cultivated area was completely destroyed and the overall direct damage to the agricultural sector was $180 million.[13] An additional $88 million is attributed to indirect losses sustained over a six-month period.

16. By some estimates, 30 per cent of Gazan arable land lies in the so-called "buffer zone".[14] Since Israeli forces stationed along the border enforce restrictions on Palestinian access to land by opening warning fire on approaching individuals, farmers in the buffer zone are unable to farm their lands.

17. Israeli measures that affect Gazan fishing communities provide another example of the negative impact of the blockade. In June 2007, the Government of Israel imposed a restriction on Gazan fishing boats, allowing them to travel only 6 nautical miles from the shore (under the Oslo Accords, the fishing limit was 20 nautical miles). In March 2009, the Government of Israel imposed a further restriction, reducing the authorized area of travel to 3 nautical miles. The Israeli navy enforces the restriction using warships stationed along the Gaza shore, and has at times shot at and arrested fishermen sailing beyond the imposed limit.[15] Restrictions on access to the sea and lack of fishing-related inputs have resulted in an estimated loss in damages of US$ 1.52 million to the fishing industry.

Collective punishment

18. As noted by senior United Nations human rights and humanitarian officials, among others, the blockade of Gaza amounts to collective punishment, which is prohibited under international humanitarian law. Article 33 of the Fourth Geneva

[12] The International Labour Organization (ILO) defines unemployment as persons (15 years old and above) who do not work and are actively seeking a job. The PCBS "relaxed definition" adds to the ILO definition people willing to work but currently not engaged in an active job search (known as "the discouraged").

[13] World Bank, "Economic monitoring note for West Bank and Gaza", April 2009; http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconMonitoringNoteApril09.pdf.

[14] The buffer zone refers to the area approximately one to two kilometres (km) to the west inside the Gaza Strip border with Israel.

[15] According to the Palestinian Centre for Human Rights, an estimated 50 fishermen were arrested during the same period, while 31 boats, small boats and other pieces of fishing equipment were confiscated.

Convention states that "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited. [...] Reprisals against protected persons and their property are prohibited."

B. Continuing armed conflict and the firing of rockets against Israeli civilian areas

19. In paragraph 5 of its resolution 63/98, the Assembly expressed grave concern at the firing of rockets against Israeli civilian areas resulting in loss of life and injury. Rocket and mortar attacks by Palestinian armed groups in Gaza launched indiscriminately into southern Israel continued during the reporting period, especially prior to and during Operation Cast Lead.

20. The report of the United Nations Fact-Finding Mission on the Gaza Conflict (see A/64/490, annex) details the indiscriminate nature of these attacks and the deaths and injuries to civilians that resulted. It noted that rocket attacks have damaged houses and schools in southern Israel, and in one case a synagogue. It found that those attacks constituted a deliberate attack against a civilian population. The report noted the high level of psychological trauma suffered by the civilian population inside Israel. For example, some 72-94 per cent of children in Sderot suffered from post-traumatic stress disorder according to data gathered by an Israeli organization in October 2007. The report found that rocket and mortar attacks and related school closures and interruptions had adversely affected the right to education of children and adults. The rocket attacks also had an adverse impact on the economic and social life of the communities affected (see also A/HRC/12/37, A/HRC/10/20 and A/HRC/10/22).

C. Restrictions on the freedom of movement of Palestinians in the West Bank and East Jerusalem

21. The severe restrictions on the freedom of movement of Palestinians living in the West Bank represent a major human rights concern, and continued in the period under review. Those restrictions are implemented through a combination of physical obstacles (e.g., checkpoints, road blocks and the Wall) and administrative and legal restrictions (e.g., closed military zones, prohibited roads and permit requirements), all of which affect Palestinian vehicular and pedestrian access throughout the West Bank and East Jerusalem.

22. The construction of the wall in the West Bank continued, albeit at a slower pace during the reporting period, though some reports indicate that budgetary and other considerations are preventing further construction.[16] In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1), the International Court of Justice pointed out that the wall is in contravention of Israel's obligations under international law, insofar as it departs from the Green Line. Based on the planned route (total 709 km), approximately 85 per cent of the wall would be in the West Bank and not along the internationally recognized 1967 armistice line between Israel and the West Bank,

[16] See Amos Harel, "West Bank fence not done and never will be, it seems", *Ha'aretz*, July 2009.

which was at the time controlled by Jordan (Green Line). Almost 9.5 per cent of the land of the West Bank (including East Jerusalem) remains either west of the Wall or in enclaves created by the route.

23. In its advisory opinion, the International Court of Justice also stated that the construction of the wall in the Occupied Palestinian Territory should cease and the portions already built in occupied territory should be dismantled, and called on Israel to make reparations for the "requisition and destruction of homes, business and agricultural lands". Approximately 200 km of the wall has been built since the advisory opinion was issued, with 58 per cent of the route constructed to date.

24. In the northern West Bank, where the area between the Wall and the Green Line was declared closed by military order in October 2003, Palestinians residing in this area (commonly known as the "seam zone") require resident permits to continue to live in their own homes.[17] They face restricted access to health and to education services, and are cut off from family and social networks that are generally located on the "Palestinian" side of the wall. It is estimated that 35,000 West Bank Palestinians will reside between the wall and the Green Line once construction is complete, in addition to the majority of the Palestinian residents of East Jerusalem.

25. Beyond the wall, hundreds of checkpoints or other physical obstructions (dirt piles, concrete blocks, boulders, trenches, fences and iron gates) restrict the movement of Palestinians in the West Bank. Most of the checkpoints are located well inside the West Bank, up to several kilometres from the Green Line.[18]

26. Approximately 1,150 km^2, more than 20 per cent of the West Bank, are designated by Israel as closed military zones. In addition, over 600 km^2, 10 per cent of the West Bank, are designated as natural reserves whose use, including grazing, is prohibited. In addition, areas in the Jordan Valley, the eastern slopes of Bethlehem and the Hebron governorates, which were previously designated as closed military zones or natural reserves, were further restricted from access to Palestinian farmers and herders during May 2009.

27. Furthermore, access to approximately one third of the West Bank, including East Jerusalem, is completely prohibited to Palestinians without a special permit[19] issued by the Israeli military. Even with a special permit, entering these restricted areas driving a vehicle with a Palestinian number plate is prohibited under all circumstances.[20]

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[17] The Association for Civil Rights in Israel, an Israeli NGO, states that these permits "are given for short periods if at all, and following which the residents must again knock on the doors of the [Government of Israel] in the hope that they will consent to a renewal. The 'permits regime' applies only to Palestinians; Israelis, Jews who are not Israeli citizens and even tourists can all enter and leave the area at will".

[18] See B'tselem, "Forbidden roads: Israel's discriminatory road regime in the West Bank", August 2004. See also, for example, Association for Civil Rights in Israel, "State announces West Bank road 443 to remain segregated until May 2010", 26 August 2009.

[19] Since 2002, all Palestinian ID-holders resident within the West Bank are required to obtain a permit (the Special Movement Permit at Internal Checkpoints in Judea and Samaria) in order to cross a "boundary" — the term the Israel Defense Forces use to refer to the checkpoints, gates or other obstructions which lay between the West Bank, the seam zone (the area between the barrier and the Green Line), and East Jerusalem/Israel, or other closed or restricted areas.

[20] See World Bank Technical Team, "Movement and access restriction in the West Bank: uncertainty and inefficiency in the Palestinian economy", 9 May 2007.

28. Those severe restrictions amount to a violation of the right to freedom of movement[21] and result in Palestinians being effectively prevented from exercising their rights, including the right to work (article 6 of the International Covenant on Economic, Social and Cultural Rights), the right to an adequate standard of living (article 11), the right to health (article 12), and the right to education (article 13). The International Court of Justice has found that both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights remain applicable in the West Bank, and in its totality the regime restricting the freedom of movement of the Palestinian population is in violation of Israel's international obligations under those Conventions.[22]

D. House demolitions and forced displacement in Area C and East Jerusalem

29. Israeli planning policies are severely restricting the construction of new housing for Palestinians in the Occupied Palestinian Territory, particularly in East Jerusalem and Area C[23] of the West Bank. Permits for new houses are rarely given and homes of West Bank or East Jerusalem ID-holders are frequently demolished on the basis that they had been built without the requisite building permission and were therefore illegal structures. That justification fails to take into account the discriminatory effects on Palestinians in East Jerusalem resulting from the application of zoning, planning and construction laws and the denials of permits. For example, between 1996 and 2000, the number of recorded building violations was four and a half times greater in Israeli areas (17,382 violations) than in the Palestinian areas of East Jerusalem (3,847). Yet the number of demolition orders issued in West Jerusalem was four times less (86 orders) than in East Jerusalem (348).[24] Between January 2008 and July 2009, a total of 552 structures, both residential and non-residential, were demolished, mainly due to lack of building permits, in Area C and East Jerusalem.[25]

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[21] Article 12 of the International Covenant on Civil and Political Rights states that "Everyone lawfully within the territory of a State shall, within that territory, have the right of liberty of movement".

[22] See International Court of Justice advisory opinion on the wall, paras. 102-113, in which the Court concluded that the protection offered by human rights conventions do not cease in cases of armed conflict, and that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are applicable in respect of individuals within its jurisdiction, even concerning those individuals under its jurisdiction but residing outside its own territory.

[23] Israel controls both security matters and civil affairs, including planning and construction in Area C, which comprises almost 61 per cent of the West Bank. Given the interrelation between Areas A and B, both of which are fragmented and surrounded by Area C, and Area C, the Israeli control of the latter affects not only the Palestinians whose homes are within it. It also affects the development prospects of every community in the West Bank and the interaction between those communities.

[24] See World Bank, loc. cit.

[25] Based on the Office for the Coordination of Humanitarian Affairs data as of 15 July 2009. In the first quarter of 2009, at least 17 structures, including 14 homes, were demolished in East Jerusalem. In total, 55 persons were affected by these demolitions and 49 of them, including 29 children, were displaced.

30. In East Jerusalem alone, from January to July 2009 at least 194 persons were forcibly displaced as a result of home demolitions conducted by the Israeli authorities. In late June 2009, the municipality of Jerusalem reportedly announced that it was considering a freeze on the demolition of 70 per cent of homes that had been built without a permit in East Jerusalem.[26] However, demolitions continue. In August 2009, the Office for the Coordination of Humanitarian Affairs cited "conservative estimates" of more than 1,500 pending demolition orders in East Jerusalem.

31. Some neighbourhoods face the prospects of mass demolitions.[27] In the Silwan neighbourhood of East Jerusalem, some 90 houses are threatened with demolitions, which would potentially displace about 1,000 persons. In Sheik Jarrah, an area in central East Jerusalem, 475 residents could face potential eviction as the ownership of their homes is contested by Israeli settlers. On 2 August 2009, the Israeli authorities evicted the Al Ghawi and Hanoun families from their homes in Sheik Jarrah, following which 53 Palestinians were left homeless.[28] The international community has raised serious concerns over ongoing forced evictions in East Jerusalem and Area C.

32. Israeli home-demolition policies are not confined to East Jerusalem. Every year, hundreds of Palestinian-owned structures are demolished in Area C — which includes approximately 60 per cent of the West Bank over which Israel retains control of development planning — for lack of building permission. As for East Jerusalem residents, thousands of Palestinian families in Area C face the constant threat of demolitions due to outstanding demolition orders. Entire communities, such as Khirbet Tana in the Nablus governorate and Al Aqaba in the Tubas governorate, are at risk of displacement due to pending demolition orders. In the first quarter of 2009, the Office for the Coordination of Humanitarian Affairs reported the demolition of 25 Palestinian-owned structures, including nine residential structures in Area C owing to lack of permits. The demolitions resulted in the displacement of 46 Palestinians, including 30 children. All the displaced were living in or next to the E1 area to the east of East Jerusalem, which is planned for settlement expansion to link the large Maale Adumim settlement with Jerusalem. There are some 3,000 outstanding demolition orders in Area C.

33. In its review of Israel's tenth to thirteenth periodic reports in 2007, the Committee on the Elimination of Racial Discrimination expressed concern regarding the "disproportionate targeting of Palestinians in house demolitions" and reiterated "its call for a halt to the demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner" (see CERD/C/ISR/CO/13). Also, the Committee on Economic, Social and Cultural Rights in its general comment No. 4 on the right to adequate housing, has stated that "instances of forced eviction are prima facie incompatible

[26] The Israeli Committee against Home Demolitions notes that freezing the demolition of 70 per cent of homes with pending demolition orders would still leave 6,000 homes to be demolished.

[27] For example, the execution of pending demolition orders in the Tel Al Ful in Beit Hanina, Khalet El'Ein, Al Abbasiya in Athuri and Wadi Yusul could affect a combined total of 3,600 persons. Planning Crisis in East Jerusalem, April 2009-Pg2: Special Focus OCHA-OPT http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf.

[28] The properties were given to an Israeli settler organization, which plans to build a new settlement in the area.

with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law" (see E/1992/23, annex III).

34. Another concern is the policy of demolishing or sealing homes in the West Bank and Gaza as a means to punish the families of Palestinians who are alleged to have carried out attacks against Israeli citizens and to deter similar actions by others. In implementing that policy, from October 2001 to the end of January 2005 Israel demolished 664 houses, leaving 4,182 persons displaced.[29] On 17 February 2005, the Minister of Defence of Israel announced a cessation of punitive house demolitions, partly because it was impossible to conclude that such actions were effective in preventing terrorist attacks.[30] However, the practice of punitive house demolition was reintroduced in January 2009 pursuant to a judgement of the Israeli High Court regarding the demolition of a house in East Jerusalem belonging to the family of Alaa Abu-Dahim, who killed eight students in a school in West Jerusalem in March 2008.[31] On 7 April 2009, Israeli security forces demolished an apartment in East Jerusalem belonging to the family of a Mr. Dwiyat, who had carried out a bulldozer attack in Jerusalem in 2008.[32]

35. Punitive home demolitions are a violation of international humanitarian law, in particular article 33 of the Fourth Geneva Convention, which states that "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited. [...] Reprisals against protected persons and their property are prohibited". The Committee against Torture, in its recent concluding observations, has also stated its concern at the reinstatement of punitive house demolitions (see CAT/C/ISR/CO/4).

E. Palestinian children in Israeli detention

36. According to NGO sources, an estimated 6,500 Palestinian children were arrested and detained in Israeli prison facilities between September 2000 and August 2008.[33] Information published by Defence for Children International-Palestine, an international NGO, states that, as of September 2009, 326 Palestinian children were in Israeli detention.[34] According to the same NGO, that number has on average remained generally constant since 2007, although there was a significant increase in the numbers of detained children in the first few months of 2009.

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[29] See B'tselem, "House demolitions as a punishment: security forces demolish house of family of perpetrator of attack in Jerusalem", 16 April 2009.

[30] Ibid.

[31] The judgement reinstates the policy of punitive house demolitions; for an English translation of the case filed by an Israeli NGO, HaMoked, see http://www.hamoked.org.il/items/110465_eng.pdf.

[32] For more details, see B'tselem, loc. cit.

[33] Defense for Children International, "Palestinian child prisoners: the systematic and institutionalized ill-treatment and torture of Palestinian children by Israeli authorities", June 2009.

[34] It should be noted that those figures include the numbers of children temporarily detained at Israel Defense Forces facilities. Hence, they could be somewhat higher than Israeli Prison Services figures. At the end of 30 September 2009, B'tselem records indicate 315 minors in detention.

37. Palestinians in the West Bank are subject to Israeli military law, which comprises mainly military orders issued by the military command. In addition, the vast majority of Palestinians detained in Israeli prisons and detention centres, including children, are detained in facilities within Israel.[35] That practice violates article 76 of the Fourth Geneva Convention, which states that "Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein". In addition, it often makes it impossible for the families of detainees to visit them. Those practices are of particular concern in the case of children. Article 37 (c) of the Convention on the Rights of the Child states that "every child deprived of liberty shall [...] have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

Age of criminal responsibility

38. In article 2, the Convention on the Rights of the Child states that States parties should respect and ensure the rights stipulated in the Convention without "discrimination of any kind".[36] Despite Israel's obligations under the Convention, Israeli legislation openly discriminates against Palestinian children residents of the Occupied Palestinian Territory with regard to criminal responsibility. Israeli legislation applicable to Israeli citizens, including settlers, defines a child as any person less than 18 years of age. On the other hand, Israeli military law applicable to Palestinian residents of the West Bank defines a Palestinian child as a person under the age of 16.[37] Children over the age of 16 are therefore subjected to the same arrest, interrogation, trial and imprisonment procedures as adults. The age of criminal responsibility is stipulated at 12 by Israeli military orders, and, in practice, children from that age are subject to the same procedures as adults despite being defined as minors. The Committee on the Rights of the Child has recommended that Israel "rescind the provision of Military Order No. 132 concerning the definition of the child and ensure that its legislation conforms to articles 1 and 2 of the Convention" (see CRC/C/15/Add.195). Those concerns were echoed by the Committee against Torture (see CAT/C/ISR/CO/4).

39. Furthermore, Israeli military courts often sentence children according to the age at the time of sentencing (or, in some cases, at the time when the indictment is issued) and not the time of the crime. Cases have been documented of children who were under 16 years of age when they were detained but sentenced as adults since they had reached 16 or over by the time of final sentencing.[38]

40. While international law does not prohibit the detention of children, article 37 (b) of the Convention on the Rights of the Child explicitly provides that the deprivation of liberty, including arrest, detention and imprisonment, should be used only as a

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[35] See Palestinian Commission on Human R Arbitrary detention, ill-treatment and torture"; see also joint press release entitled "Chil otection agencies concerned about abuse of child detainees" (http://www.unicef.org/oPt/1 _STATEMENT_JUNE_9.pdf).

[36] In addition, general comment No. 10 of Committee on children's rights in juvenile justice also states that "States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally" (see CRC/C/GC/10).

[37] Military Order No. 132 pertaining to juvenile delinquents in the West Bank was adopted in September 1967; see also: Defense for Children International, loc. cit.

[38] See Defense for Children International, loc. cit.

measure of last resort and for the shortest appropriate period of time.[39] Furthermore, article 40 of the Convention on the Rights of the Child mentions a number of steps to be taken in the case of a child alleged as, accused of, or recognized as, having infringed the penal law. That would include, for example, the right to be informed promptly and directly of the charges against her or him and, where appropriate, to have legal or other appropriate assistance through his or her parents in preparation and presentation of his or her defence.[40] The information available to the Office of the United Nations High Commissioner for Human Rights indicates that children are often only informed of the charges after they have been detained for some time and do not have a meaningful opportunity to prepare a defence against the charges (see also paras. 41-50 below).[41]

Ill-treatment and abuse

41. In the majority of cases documented by NGOs, throwing stones at moving Israel Defense Forces (IDF) vehicles or the wall[42] is the crime with which children are charged.[43] Children are often arrested at home in the middle of the night or early hours of morning,[44] and a confession obtained during interrogation is almost invariably the sole piece of primary evidence used by the prosecution.[45]

42. Ill-treatment of Palestinian children has been reported both at the moment of the arrest and during interrogation.[46] Methods of ill-treatment and abuse reportedly include beatings, being handcuffed in painful, contorted positions for long periods of time, threats of sexual abuse, hooding the head and face in a sack and *Shabah*.[47] In one case documented by the Office of the United Nations High Commissioner for Human Rights,[48] a 14-year-old-boy resident of the village of Qatanna was arrested on 21 March 2009 by soldiers across the street from his home, after other children nearby had thrown stones at an IDF vehicle. While being transferred to an Israeli military camp, the soldiers slapped him several times, handcuffed and blindfolded him. The boy stated that the handcuffs were too tight and caused him great pain and that the blindfold may have been coated in tear gas since his eyes were burning the entire time. After repeated appeals at the police station, a soldier noted that the

[39] For more information, see general comment No. 10 (CRC/C/GC/10).

[40] The provisions of this article essentially mirror article 14 of the International Covenant on Civil and Political Rights.

[41] See Defense for Children International, loc. cit. In addition, a small number of children are detained under Israeli provisions allowing for administrative detention, which has even fewer safeguards than detention under normal military law and has been the subject of concern by the Human Rights Committee. According to UNICEF, the number of children held in administrative detention at any given time in 2008 ranged from three to 18. At any given time through June 2009, the number ranged from one to six, and as of June 2009, one child remained in administrative detention. For further details on the issue of administrative detention, see A/HRC/12/37.

[42] The wall is treated for these purposes as an IDF facility, and, as such, throwing stones at the wall carries a maximum penalty of 10 years imprisonment.

[43] Under military orders in force in the West Bank, throwing stones can carry a maximum charge of 20 years imprisonment.

[44] Defense for Children International, loc. cit.

[45] Ibid.

[46] Ibid. DCI-Palestine describes the ill-treatment and torture of Palestinian children by IDF as "widespread, systematic and institutionalized".

[47] Ibid. The Shabah position entails forcing a person to stand or sit in extremely painful and harmful positions, in most cases with hand tied together and eyes blindfolded.

[48] OHCHR interviews were held in June 2009.

boy's hands were turning blue and took off his handcuffs and blindfold. He was then subjected to interrogation for four hours, during which an interrogator beat his face and ears with the back of his hand, approximately 40 times.

43. Under international law, no person should ever be subjected to torture, under any circumstances. Article 2 (2) of the Convention against Torture states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture" (see also article 7 of the International Covenant on Civil and Political Rights).

44. In its concluding observations and recommendations to Israel's fourth periodic report in May 2009, the Committee against Torture expressed "deep concern at reports from civil society groups that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the [Convention against Torture] in order to obtain confessions". The Committee was further concerned by the allegations that "approximately 700 Palestinian children annually were charged under military orders and prosecuted by Israeli military courts and that 95 per cent of these cases have relied on confessions as evidence to obtain a conviction" (see CAT/C/ISR/CO/4).

Fair trial and lack of education in detention

45. It is often the case that Palestinian children arrested by Israeli soldiers are not promptly advised of the charges against them or of their rights, and are not given immediate access to a lawyer or allowed contact with a parent or other guardian. Children are often forced into signing confessions in Hebrew, a language which in most cases they do not understand. That confession is then used as the primary piece of evidence against them in a military trial.[49]

46. In the same case described in paragraph 42 above, the boy was presented with and signed a paper in Hebrew, a language which he did not understand. While he was told it was only an administrative paper for his file, he found out at trial that it was a confession. At his second court hearing, he was also informed for the first time that his lawyer had agreed to a plea bargain on his behalf. The boy was finally released on bail on 8 April and later sentenced to 40 days imprisonment. After the family paid an NIS 8,000 fine (approximately US$ 2,000), the sentence was reduced to 19 days (with a three-month suspension), the time he had already spent in prison.

47. A December 2007 report by Yesh Din, an Israeli NGO, reveals that Israel's military court system for Palestinian suspects in the West Bank produced almost automatic convictions, with more than 99.7 per cent of those accused being found guilty and 95 per cent of the cases ending in a plea bargain. The average hearing was just two minutes long, interpretation was inadequate and the Arabic-speaking accused often did not understand the charges brought against him or her. In the majority of cases, the trial was the first time for the accused to meet his or her lawyer.[50] These general traits have been corroborated by the Office of the United Nations High Commissioner for Human Rights monitoring of military trials in the West Bank.

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[49] See, for example, Defense for Children International, loc. cit.

[50] See Yesh Din, "Backyard proceedings: the implementation of due process rights in the military courts in the Occupied Territories", December 2007.

48. Persons accused of a criminal offence have the right to a fair and public hearing, the right to be presumed innocent, the right to be informed at the time of arrest of the charges against him or her, the right to be brought promptly before a judge, the right to have adequate time and facilities for the preparation of his or her defence and the right to be tried without undue delay, among others (see articles 9 and 14 of the International Covenant on Civil and Political Rights). Article 9 (3) of the International Covenant on Civil and Political Rights also states that it should "not be the general rule that persons awaiting trial shall be detained in custody". In line with article 14 (3) g of the International Covenant on Civil and Political Rights, article 40 (2) (b) iv of the Convention on the Rights of the Child requires that a child be not compelled to give testimony or to confess or acknowledge guilt.

49. In late July 2009, Israel issued a military order to establish new military juvenile courts in the West Bank to try children under 16 years of age. The order also established a statute of limitations of two years for offences committed by children, as opposed to the situation before, where there was no such statute (though in the new order that statute may be removed by the chief military prosecutor).[51] At the time of preparation of the present report, it remained to be seen how the order would be implemented.

50. Educational opportunities for children in detention are in most cases inadequate. Palestinian children receive only limited education in two out of the five prisons where they are kept, and there is no education provided for in any of the interrogation or detention centres, where children are often sometimes kept for three months or more.[52]

III. Recommendations

51. **The Government of Israel should end the blockade of Gaza, which is having a negative impact on the humanitarian and human rights situation of the civilian population. In particular, the Government of Israel should allow unimpeded access to Gaza for humanitarian aid and the non-humanitarian goods needed for the reconstruction of properties and infrastructure. Israel should also address effectively and immediately the water, sanitation and environmental crisis in Gaza.**

52. **All parties to the conflict should abide scrupulously by their obligations under international human rights law and international humanitarian law. All allegations of violations of international humanitarian law and human rights violations during the reporting period must be investigated by credible, independent and transparent accountability mechanisms, taking fully into account international due process of law standards. Equally crucial is upholding the right of victims to reparation.**

53. **The Government of Israel should take steps to facilitate freedom of movement for Palestinians in the West Bank. In accordance with the International Court of Justice advisory opinion on the wall, it should immediately cease construction of the wall and dismantle portions already built**

[51] See Amira Haas, "IDF sets up separate court for Palestinian minors", *Haaretz*, 24 August 2009. These reports have been corraborated by Defense for Children International.

[52] See Defense for Children International, loc. cit.

in occupied territory. Israel should also issue viable zoning plans and a less cumbersome process for issuing building permits in a non-discriminatory manner for all in East Jerusalem and other places in the West Bank. Until such time, the evictions and demolitions of Palestinian homes should cease. Victims of forced evictions should also be afforded the possibility of effective redress. Punitive demolitions should cease immediately.

54. **Israel, as the occupying power, should ensure that the rights of children are respected. The Government of Israel should take all necessary steps to address concerns raised in the present report with regard to the arrest and detention of Palestinian children, and should ensure that all detentions be conducted in strict compliance with international human rights law, in particular due process of law standards, with due respect of the vulnerability of children. The Government of Israel should also ensure that all allegations of torture and ill-treatment are promptly and effe 'vely investigated and perpetrators prosecuted. Israel should refrain from discriminating between Israeli and Palestinian children with regard to the age of criminal responsibility. The Government of Israel should ensure that alternative measures to detention are explored and that detention is used only as a last resort.**

55. **The General Assembly and the international community should actively promote the implementation of the decisions, resolutions and recommendations of the General Assembly, the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedure mandate-holders.**

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Human resources management

Human resources management

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the implementation of continuing appointments (A/64/267), the report of the Secretary-General on the provisional Staff Rules (A/64/230), the report of the Secretary-General on his practice in disciplinary matters and possible criminal behaviour from 1 July 2008 to 30 June 2009 (A/64/269), the report of the Secretary-General on the activities of the Ethics Office (A/64/316) and the report of the Secretary-General on the composition of the Secretariat (A/64/352). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification. The Committee also met with representatives of the United Nations Staff Union in New York at their request.

I. Implementation of continuing appointments

2. In section II, paragraph 2 of its resolution 63/250, the General Assembly approved new contractual arrangements comprising three types of appointment — temporary, fixed-term and continuing — under one set of Staff Rules. Those arrangements entered into force on 1 July 2009. In paragraph 3, the Assembly requested the Secretary-General not to appoint any staff to continuing contracts before 1 January 2010 pending consideration by the Assembly of additional information concerning the implementation of such contracts.

3. The report of the Secretary-General on the implementation of continuing appointments (A/64/267) responds to the specific request of the General Assembly in section II, paragraph 4 of its resolution 63/250, that the Secretary-General report to it at its sixty-fourth session on the following issues with a view to the implementation of a system for the continuing appointment regime by 1 January 2010:

Please recycle

(a) Rigorous and transparent procedures for granting continuing appointments to staff, including the criteria for eligibility, the relationship with disciplinary measures and the central management of conversions;

(b) The role of the performance appraisal system and options for strengthening it to ensure that staff members considered for continuing appointments have demonstrated the highest standards of efficiency, competence and integrity, taking into account any deliberations of the International Civil Service Commission (ICSC) on this issue;

(c) The financial and management implications of converting appointments from fixed-term to continuing, and the possible establishment of a ceiling on the number of conversions;

(d) Analysis of the implications of the proposed continuing appointments for the system of geographical ranges;

(e) Rigorous and transparent procedures to review the performance of staff and the continuing need for functions when determining the granting and termination of an appointment of a staff member, as well as clear and firm lines of accountability, to fully ensure that the granting and termination of continuing contracts is undertaken in a fair and transparent manner, with full regard to due process and the rights of staff;

(f) Options for ensuring that successful candidates from national competitive examinations and language staff are not disadvantaged by proposed changes;

(g) Analysis of the implications for Junior Professional Officers;

(h) The potential ramifications of the proposed amendment to staff regulation 9.1.[1]

4. In paragraphs 3 to 5 of his report, the Secretary-General provides some background information on the implementation of continuing appointments and states that, under the contractual framework of the United Nations common system adopted by ICSC, the continuing appointment is intended for career staff who provide programme continuity in core functions of the Organization. The Organization must have a continuing need for the core functions in accordance with its mandate before granting a continuing appointment that by its very nature is open-ended. The Advisory Committee notes that formal staff-management consultations on the Secretary-General's proposals were held during the last four sessions of the Staff-Management Coordination Committee.

5. **The Advisory Committee considers that the proposals outlined by the Secretary-General do not respond fully to the request of the General Assembly referred to in paragraph 3 above. Accordingly, the Committee identifies below the areas which, in its view, require further clarification and/or explanation if the General Assembly is to take a fully informed decision on the implementation of continuing appointments.**

[1] Refers to the former staff regulation 9.1, now staff regulation 9.3.

Eligibility criteria: five years of continuous service

6. In paragraphs 6 and 7 of his report, the Secretary-General sets out the criteria for eligibility for consideration for a continuing appointment. He proposes that a Secretariat staff member with five years of continuous service in an entity that applies the Staff Regulations and the Staff Rules, irrespective of the type of appointment — i.e. staff members previously appointed under the 100, 200 or 300 series or appointed since 1 July 2009 under the new Staff Rules — would be eligible for consideration for a continuing appointment. In addition, there would have to be a continuing need for the services of the staff member in the Organization, and he or she would have to meet the highest standards of efficiency and competence, as evidenced by a performance rating of 3 or above in the four most recent performance appraisal reports[2] as well as the absence of any disciplinary measure imposed during the five years preceding the review.

7. In order to facilitate the General Assembly's consideration of this issue, the Advisory Committee sought clarification as to the total number of staff who, in accordance with the Secretary-General's proposals, could ultimately be awarded permanent or continuing appointments.

8. With regard to permanent appointments, the Advisory Committee was provided, upon enquiry, with updated information concerning the number of staff holding such appointments. As at 30 June 2009, the total population of staff holding 100-series appointments at Headquarters, regional commissions and offices away from Headquarters was 13,648. Of that group, 4,759 staff members, or 34.9 per cent, held a permanent or probationary appointment, and 6,571 staff members, or 48.1 per cent, were eligible for consideration for conversion to a permanent appointment in the context of the one-time review of staff eligible for consideration for conversion to permanent appointments referred to in paragraphs 47 to 52 of the Secretary-General's report. Of the 6,571 individuals eligible for consideration for a permanent appointment, 333 would be retiring during the five-year period from 2009 to 2013, leaving a net maximum of 6,238 individuals who could be granted permanent appointments. The Advisory Committee notes that, unlike continuing appointments, permanent appointments cannot be terminated in the interest of the good administration of the Organization without the consent of the staff member (see staff regulation 9.3 (b)). Thus, by 2013, and after completion of the one-time review, the total number of permanent appointment holders could potentially rise to 10,997. The Committee notes that this number would represent around 80 per cent of all staff holding 100-series appointments at Headquarters, regional commissions and offices away from Headquarters.

9. With regard to the aforementioned one-time review, the Advisory Committee notes from paragraph 48 of the report that the Secretary-General states that the review is being conducted in order to protect the acquired rights of fixed-term staff appointed under the previous 100 series of the Staff Rules who met the conditions of

[2] The current performance appraisal rating scale consists of the following five ratings: 1 (consistently exceeds performance expectations); 2 (frequently exceeds performance expectations); 3 (fully meets performance expectations); 4 (partially meets performance expectations); and 5 (does not meet expectations). The Advisory Committee was informed that, during the biennium 2006-2007, 99.4 per cent of staff received fully successful performance ratings (a rating of 3 or above).

the old rule 104.12 (b) (iii).[3] A Secretary-General's bulletin, setting out the eligibility criteria and the procedures to be followed, has been issued (ST/SGB/2009/10).

10. As for continuing appointments, the table immediately below paragraph 20 of the Secretary-General's report illustrates the number of staff eligible for continuing appointment, by year. It was clarified to the Advisory Committee, upon enquiry, that the table related only to staff serving at headquarters locations and the regional commissions; staff at field missions were excluded. The Committee notes in that connection that, as at 30 June 2009, there were just under 15,000 staff serving at headquarters and at the regional commissions (see A/64/352, figure I). According to the aforementioned table, a cumulative total of 4,511 staff would meet the basic eligibility criterion for consideration for conversion to a continuing appointment, i.e. those with five years' continuous service with the Organization, over the next five years (2009 to 2013). Upon enquiry, the Advisory Committee was informed that 92 of those individuals would retire during the five-year period in question, leaving a net maximum of 4,419 staff who could hold a continuing appointment (assuming that all those who met the basic eligibility criterion also satisfied the other requirements referred to in paragraph 6 above).

11. With respect to mission staff, the Advisory Committee notes that, as at 30 June 2009, there were around 23,000 staff members serving in peacekeeping missions and other field locations (see A/64/352, figure I). Upon request, the Advisory Committee was provided with the following table showing the number of mission staff, both internationally and locally recruited, on fixed-term appointments as at 1 July 2009 who, in accordance with the Secretary-General's proposals, would be eligible for consideration for a continuing appointment after completing five years of continuous service.

Number of mission staff eligible for continuing appointment, by year

Category	*2009*	*2010*	*2011*	*2012*	*2013*	*Cumulative total for the five-year period*
Professional	646	268	300	437	586	2 237
Field service	1 389	407	387	651	587	3 421
National Professional Officers	141	103	155	165	163	727
General service	3 258	1 867	2 607	2 662	2 889	13 283
Total	**5 434**	**2 645**	**3 449**	**3 915**	**4 225**	**19 668**

The Committee was further informed that, of the 19,668 eligible staff, 709 would retire during the five-year period in question, leaving a net maximum of 18,959 staff who could hold a continuing appointment.

[3] In his report entitled "Investing in people", the Secretary-General indicated that, while permanent appointments would no longer be offered, under the proposed new contractual arrangements, the acquired rights of staff who, by the time the new regime became effective, would have the right to be considered for permanent appointment would not be affected (see A/61/255, para. 247). Subsequently, in its resolution 63/271, the General Assembly requested the Secretary-General to report to it on the full implications of converting all currently eligible staff to permanent appointments.

12. The situation concerning the number of international staff at field missions who might become eligible for continuing appointments is unclear because of an ambiguity in the Secretary-General's report. He asserts in paragraph 7 that staff previously appointed under the 100, 200 or 300 series or appointed since 1 July 2009 under the new Staff Rules would be eligible for consideration. However, the Advisory Committee recalls that, in section II, paragraph 10 of its resolution 63/250, the General Assembly decided that field staff serving on 300-series appointments of less than four years who were not performing temporary functions would be given mission-specific fixed-term contracts until such time as they had gone through a competitive process subject to the review of a central review body. It therefore appears that, on account of their recruitment status, such staff could not be awarded continuing appointments prior to such a review. While the Committee was informed, upon enquiry, that field review bodies were being established in field missions, it did not receive information on the number of staff in the table above who are limited to mission service or on the specific time frame for the competitive processes and central review. **Clarification as to the sequencing of the central review process and the review of eligibility for consideration for continuing appointment should be provided to the General Assembly.**

13. Of the maximum number of 18,959 staff members serving in peacekeeping operations and other field locations who could be awarded continuing appointments in the five-year period from 2009 to 2013, 13,751 are locally recruited (General service and National Professional Officers). In accordance with the proposal put forward by the Secretary-General at the sixty-second session, those individuals would be eligible to receive continuing appointments if their services continued to be needed beyond five years and if they met the applicable standards. According to the Secretary-General, they would receive termination indemnities commensurate with their length of appointment when their service ended, normally with the closure of the mission. The Advisory Committee recalls that this particular proposal was made in response to the recommendation of the Staff-Management Coordination Committee that the Organization has an obligation to offer both greater job security for the duration of a mission and end-of-employment termination benefits that will enable locally recruited mission staff to be gainfully employed, or self-employed, when a mission withdraws (see A/62/274, para. 47).

14. **Unlike the Secretary-General, the Advisory Committee is not convinced that locally recruited mission staff should be eligible for continuing appointments. Although peacekeeping has become a core activity of the Organization, individual peacekeeping operations are, by their very nature, temporary. Awarding continuing appointments to locally recruited staff whose service is limited to one operation in one location seems to contradict the principle underlying the introduction of continuing appointments. Accordingly, the local staff employed by those operations should continue to be hired on contracts of a finite duration.**

15. **Although the data in paragraphs 8 to 14 above are not definitive, the Advisory Committee can draw a certain number of conclusions. First, a very large percentage of the non-field mission staff of the Organization will be eligible for permanent appointment. Second, the Secretary-General's report does not contain even a tentative estimate of the actual number of staff who might eventually be awarded continuing appointments; indeed, the eligibility of international staff in field missions is unknown. Some 5,200 would be eligible**

over the next five years, but those on mission-specific fixed-term contracts, until they have been through a competitive process subject to the review of a central review body, will be limited to mission service (see para. 12 above). Thus it seems that the staffing structure at headquarters locations will be more rigid than ever, while progress will be far slower with respect to the integration of peacekeeping staff into a career stream. This would appear to put field staff at a significant disadvantage vis-à-vis their non-field counterparts. While this may be the unavoidable by-product of the one-time review and the provisions of section II, paragraph 10 of General Assembly resolution 63/250, the Advisory Committee recommends that the Secretary-General take measures to improve the security of tenure of mission staff by, for instance, offering them appointments of a duration that reflects mission operational requirements.

16. **Third, in the absence of definitive data on the number of staff who may ultimately be awarded continuing appointments, the Advisory Committee considers that it is difficult to see how the Secretary-General would respond to the provisions of section II, paragraph 16 of resolution 63/250, which refers to the need for a judicious mix of career and fixed-term appointments.** Upon enquiry, the Advisory Committee was informed that it was envisaged that retirements would allow for that mix.

17. In this connection, the Advisory Committee notes from the report on the composition of the Secretariat that a total of 1,720 Secretariat staff on 100-series appointments of one year or longer, or an average of 382 staff per year for the next four and a half years, will retire during the period from 2009 to 2013 (see A/64/352, para. 56). The Committee was informed, upon enquiry, that only around 150 P-3 posts with guaranteed funding for one year or more were advertised each year. Under the new contractual regime, successful applicants would be offered fixed-term appointments which, subject to satisfactory service and provided that there was an ongoing need for the post in question, could be renewed. **From these figures, the Advisory Committee concludes that opportunities to recruit new staff on contracts of one year or longer and thus to bring in fresh insight and expertise are currently rather limited. The Secretary-General should therefore explain in more detail to the General Assembly how he intends to achieve the judicious mix of career and fixed-term appointments referred to in resolution 63/250.**

Eligibility criteria: continuing need

18. In paragraph 12 of his report (A/64/267), the Secretary-General indicates that the issue of continuing need would be one of the main criteria for the granting of a continuing appointment. He asserts, in that respect, that the anticipated longevity of the programme, in combination with the suitability of an individual for longer-term functions, would determine the continuing need for the services of the staff member concerned.

19. The Advisory Committee enquired whether the Secretary-General had attempted to quantify continuing need in the major occupational groups since, absent that information, it was not clear to the Committee how the Secretary-General could know how many continuing appointments should be awarded in any particular group, bearing in mind also the need to preserve opportunities for new staff. The Committee was informed that such information was not available, but that

the Secretary-General was working on the assumption that functions performed at headquarters locations were likely to be of an ongoing nature.

20. The Advisory Committee recalls that, in the report on human resources management reform that he submitted to the General Assembly at its sixty-third session (see A/63/282, paras. 12 and 31), the Secretary-General indicated that, in order to undertake a more strategic, proactive and planned approach to human resources management, workforce planning was being introduced Secretariat-wide during the biennium 2008-2009. He further stated that the new talent management tool would support the implementation of strategic workforce planning Secretariat-wide and would also be used for the introduction of a skills inventory. During the course of its consideration of the Secretary-General's report on the implementation of continuing appointments, the Advisory Committee enquired whether the Office of Human Resources Management had compiled any data showing which specific skills or functions would be needed by the Organization on an ongoing basis. The Office responded that no such information was available.

21. **The Advisory Committee considers that, in the absence of Organization-wide data on the types of functions for which there is a continuing need and on the populations required in the major occupational groups, it will be difficult to have a basis on which to award continuing appointments. The Committee therefore recommends that the Secretary-General make use of the strategic workforce planning techniques that should already be in place to provide a clearer picture of ongoing functions, as well as an estimate of how many staff members in the major occupational groups would be required on a continuing basis to ensure the effective implementation of the Organization's mandates. That information should be provided directly to the General Assembly.**

22. The Advisory Committee notes from paragraph 12 (b) of the Secretary-General's report (A/64/267) that the long-term need for a staff member's services would also be assessed on the basis of whether his or her qualifications and past experience and training demonstrate that he or she might have transferable skills with a potential to perform long-term functions that may be different from those of the post he or she is occupying at the time of the review. However, the Secretary-General's report does not contain any information on the criteria that will be used during the review process to determine whether or not a particular individual has transferable skills. **The Advisory Committee stresses the need for the development of clear and transparent criteria so as to ensure an objective process and avoid recourse to the system of administration of justice.** The Committee has commented in more detail on the review process in paragraphs 31 to 33 below.

Eligibility criteria: performance

23. The final eligibility criterion discussed in the Secretary-General's report is performance. As indicated in paragraph 26, a thorough review would be made of the staff member's performance, including examination of his or her official file and performance evaluations. The staff member would need to have received fully successful performance ratings for the last four years and should not have been subject to any disciplinary measure during the five years prior to the review in order to satisfy the criteria of the highest standards of efficiency, competence and integrity.

24. The Advisory Committee has, on previous occasions, emphasized the need for reform of the current performance appraisal system, stressing that a credible, fair and fully functioning system is critical to effective human resources management policies (see, inter alia, A/63/526, para. 24). In paragraph 27 of his report, the Secretary-General indicates that an intersessional staff-management working group was established in 2007 to develop mechanisms to strengthen the performance management system. The group is due to complete its work by the end of 2009. Upon enquiry, the Advisory Committee was informed that phase I of the redesigned system was scheduled for global roll-out and implementation in April 2010, to coincide with the start of that year's performance appraisal cycle. The performance management design team was currently engaged in business process blueprinting and was undertaking Organization-wide consultations with staff representatives. The new system included the following elements: a multiple rating system (to be implemented on a pilot basis); a new rating scale with enhanced emphasis on staff development; a strategy for mandatory performance management training for all staff with supervisory responsibilities; and a strengthening of the role of the Management Performance Board and the Joint Monitoring Committee.

25. The Advisory Committee notes the efforts under way to strengthen the performance management system. The Committee further notes that, as requested by the General Assembly in section VI, paragraph 4 of its resolution 63/250, the Secretary-General will report to the Assembly at its sixty-fifth session on the review of the current performance appraisal system. **The Advisory Committee looks forward to receiving the Secretary-General's report.**

Possible establishment of a ceiling

26. In paragraphs 13 to 24 of his report (A/64/267), the Secretary-General discusses the possible establishment of a cap or ceiling on the number of staff who would be eligible to be considered for or who would be granted continuing appointments. In paragraphs 13 and 14, he states that such a ceiling could potentially limit the number of staff holding such appointments as well as the related financial liability to the Organization linked to the payment of termination indemnity to holders of continuing appointments should their appointments need to be terminated. In paragraph 15, however, he reaffirms his earlier position, as expressed in his report on streamlining contractual arrangements (see A/63/298, para. 30), that a ceiling on the number of conversions to continuing appointments would not be sound management practice. He considers that that imposition of a ceiling may result in excluding certain staff who are otherwise eligible for consideration for a continuing appointment on the basis of all the stated criteria, which would very likely lead to claims of arbitrariness and would appear to run counter to the notion that the conversion process is merit-based. Furthermore, the Secretary-General considers that a ceiling linked to particular posts, mandates or functions would be inconsistent with the Organization's operational requirements and mobility policy, as staff would be discouraged from applying for and accepting posts in specific projects or entities if they were to be ineligible for continuing appointments. He also believes that a ceiling would become very burdensome from an administrative perspective.

27. In paragraph 17 of his report, the Secretary-General expresses the view that the proposed criteria for conversion will already effectively exclude staff who do not meet them. In paragraph 23, he states that those criteria would also ensure that

continuing appointments would not be granted "automatically", thereby addressing previous concerns that eligibility for consideration for continuing contracts would be tantamount to automatic conversion.

28. **The Advisory Committee recognizes that, given the significant population of staff who may be awarded permanent appointments consequent to the one-time review, as well as the significant growth in recent years in the number of staff working in United Nations peace operations, it will, in all likelihood, be necessary to regulate the total number of staff with a long-term claim on the Organization. The Committee also recognizes that there may be some need to ensure that the Organization can adjust its staff population and profile to changing needs.** In this connection, the Secretary-General points out in paragraph 34 (g) of his report that, pursuant to provisional staff rule 9.6 (d), a continuing appointment can be terminated in the interest of the good administration of the Organization, without the staff member's consent. The Advisory Committee recalls that, in section II, paragraph 22 of its resolution 63/250, the General Assembly decided that, in the context of the Secretary-General's proposal, "in the interest of the good administration of the Organization" is to be interpreted principally as a change or termination of a mandate.

29. **While acknowledging the basis for the underlying concerns about regulating the total number of staff with a long-term claim on the Organization, the Advisory Committee reiterates its earlier recommendation against the establishment of a ceiling (see A/63/526, para. 39). Rather than establishing a ceiling, the General Assembly could, as an initial measure, consider adjusting the eligibility criteria in order to limit the eligible population.**

30. With particular reference to the Secretary-General's contention that a ceiling linked to particular posts, mandates or functions would be inconsistent with the Organization's mobility policy, the Advisory Committee points out that no such policy currently exists (see A/63/208). **The General Assembly may wish to request the Secretary-General, as part of the review of the mobility policy that is to be submitted at the sixty-fifth session, to address the relationship between mobility and continuing appointments.**

Rigorous and transparent procedures for the granting of continuing appointments

31. In section II, paragraph 4 (a) of its resolution 63/250, the General Assembly requests the Secretary-General to report on rigorous and transparent procedures for granting continuing appointments to staff, including the central management of conversions. Paragraphs 29 to 32 of the Secretary-General's report respond to that request. The Secretary-General proposes that all cases of staff members eligible for consideration for a continuing appointment should be reviewed by a joint review body, which would conduct a rigorous review of both the staff member's performance and the continuing need for the functions. Since the General Assembly has already acknowledged, in section II, paragraph 18 of its resolution 63/250, that there is a need to centrally manage the conversion from fixed-term to continuing appointments on a competitive and transparent basis, the Secretary-General further proposes that the Office of Human Resources Management, on behalf of the Secretary-General, would retain overall authority to grant continuing appointments, which would be delegated to offices away from Headquarters and field missions for

locally recruited staff. Accordingly, joint review bodies would be centralized for international staff while for local staff they would be established locally.

32. The Advisory Committee notes that the proposed review process outlined in paragraph 31 of the Secretary-General's report consists of a three-stage procedure involving programme managers, the Office of Human Resources Management and the joint advisory body. Upon enquiry, the Committee was informed that a multiple-step review process was necessary to ensure that conversion did not occur "automatically". **The Advisory Committee agrees with the Secretary-General that the conversion process should be managed centrally by the Office of Human Resources Management, primarily because the latter is the only entity that is equipped to have a global picture of overall workforce needs. The Committee is concerned, however, that the proposed process is overly burdensome. In addition, considering that around 9,600 staff members, or an average of around 1,900 a year, will become eligible for consideration for conversion to continuing appointments during the five-year period from 2009-2013, the Committee believes that the review will be very time-consuming for those administering it. To streamline the process, one option would be to refer cases to a joint advisory body for review only where there is disagreement between the programme manager and the Office of Human Resources Management. The General Assembly may wish to request that the Secretary-General, while ensuring that the review process remains sufficiently rigorous, identify other options for streamlining it.**

33. The Advisory Committee recalls that, in its previous report on human resources management reform, it requested information about the composition of the joint advisory body and its rules of procedure (see A/63/526, para. 36). The only information in the Secretary-General's report that appears to respond to this request is the statement, in paragraph 32, that the persons involved directly in the review, including those on the joint review bodies, must be capable of taking an organization-wide view and have enough knowledge to assess future requirements and staff potentials. Upon enquiry, the Committee was informed that the joint review bodies would be composed of representatives of staff and management. Staff-management consultations on their terms of reference would be held in due course. **The Advisory Committee is of the view that the Secretary-General's report does not explain how members of the joint review bodies would be able to take an organization-wide view or have enough knowledge to assess future requirements and staff potential. The Committee recommends that the Secretary-General clarify this aspect of his proposal to the General Assembly when it considers this issue.**

Implications of continuing appointments for the system of geographical ranges

34. Paragraphs 42 and 43 of the Secretary-General's report (A/64/267) respond to the General Assembly's request that he conduct an analysis of the implications of the proposed continuing appointments for the system of geographical ranges. According to the Secretary-General, the introduction of continuing appointments will have no impact on the system, because the appointment status of a staff member and his or her type and duration of appointment are not linked. The Advisory Committee notes the information provided by the Secretary-General and recalls that the issue of geographical representation will be discussed in more detail at the sixty-fifth session when the General Assembly considers broader human resources issues.

II. Provisional Staff Rules

35. The report of the Secretary-General on the provisional Staff Rules (A/64/230) was submitted pursuant to staff regulation 12.3 and provides information on the new Staff Rules that the Secretary-General provisionally promulgated on 1 July 2009 (see ST/SGB/2009/7) in order to implement the new contractual arrangements approved by the General Assembly in its resolution 63/250. In accordance with staff regulation 12.4, the provisional Staff Rules will enter into full force and effect on 1 January 2010 taking into account any modifications and/or deletions directed by the General Assembly during the main part of its sixty-fourth session.

36. Section V of the Secretary-General's report gives an overview of the structure and content of the provisional Staff Rules, which were prepared using the 100 series as a baseline while ensuring that the operational requirements of the 200 and 300 series were incorporated. The provisional Rules consist of 13 chapters that follow the same order and structure as the previous 100 series from chapter I to XII. Notable changes to the Rules include:

(a) The introduction of a new chapter II on the classification of posts and staff;

(b) The amendment of chapter III on salaries and related allowances and chapter IV on appointment and promotion to reflect the implementation of the new contractual framework;

(c) The reorganization of chapter IX on separation from service so as to, inter alia, include the new ground for termination "in the interest of the good administration of the Organization" for staff members holding continuing appointments, to apply also when the staff member is not in agreement;

(d) The amendment of chapters X and XI on disciplinary measures and appeals, respectively, in order to reflect the decision of the General Assembly on the implementation of the new system of administration of justice in the United Nations;

(e) The introduction of a new chapter XIII on transitional measures, which reflects the protection of acquired rights for serving staff members under the former 100, 200 and 300 series of the Staff Rules, in particular those holding probationary, permanent or indefinite appointments.

37. The Advisory Committee notes that, as the Secretary-General indicates in paragraphs 16 and 17 of his report, the Office of Human Resources Management conducted extensive consultations on the draft provisional Staff Rules with various stakeholders, including Staff Union representatives. The Committee was informed, upon enquiry, that, since the provisional Staff Rules had not been drafted within the framework of the Staff-Management Coordination Committee, representatives of the United Nations Staff Union in New York, which had withdrawn from participation in the Coordination Committee, had taken part in the consultations.

38. As for the text of the provisional Rules, the Advisory Committee notes that, as indicated by the Secretary-General in paragraph 25 of his report, the language of provisional staff rule 4.14 on continuing appointments and provisional staff rule 4.15 (j) on the role of the central review bodies in the conversion or granting of

continuing appointments indicates that the granting of such appointments is subject to the Assembly's further consideration of this issue at its sixty-fourth session.

39. With specific reference to provisional rule 4.14 (c), the Advisory Committee, during its consideration of the Secretary-General's report, expressed concern that the present wording ("The Secretary-General shall prescribe which staff members are eligible for consideration for continuing appointments") suggests that the Secretary-General will have the discretion to select individual staff members for consideration for continuing appointments. It was clarified to the Committee that the intention of the provision was to endow the Secretary-General with the authority to prescribe the criteria determining staff members' eligibility for consideration for continuing appointments. **The Advisory Committee trusts that provisional staff rule 4.14 (c) will be amended to reflect that understanding.**

40. **The Advisory Committee recommends that the General Assembly request the Secretary-General to amend staff rules 4.14 and 4.15 (j) on the basis of its consideration of the report of the Secretary-General on continuing appointments at its sixty-fourth session and report on the new Staff Rules in accordance with staff regulation 12.3 at its sixty-fifth session.**

41. In section VI of his report, the Secretary-General addresses the issue of permanent resident status, a question that was last discussed by the General Assembly at its sixty-first session (see A/61/228 and Corr.1 and A/61/537). In paragraph 36, he indicates that the requirement to renounce permanent resident status stems from a long-standing policy articulated by the General Assembly in 1953, when the Fifth Committee, upon the recommendation of the Advisory Committee, noted that "the view was widely held that international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations" (see A/2615, paras. 69 and 70). The former Staff Rules were amended to reflect that policy, which continues to find expression in provisional Staff Rule 1.5 (c): "A staff member who intends to acquire permanent residence status in any country other than that of his or her nationality [...] shall notify the Secretary-General of that intention before the change in residence status [...] becomes final".

42. In paragraphs 37 to 41 of his report, the Secretary-General sets out the reasoning behind his proposal that the General Assembly reconsider the requirement to renounce permanent residence status as it applies to all internationally recruited staff members. His main arguments are that (a) in an era when family situations have increasingly shifted from national to international settings, the right to permanent resident status is an important factor with respect to establishing and maintaining family ties; and (b) the requirement to renounce permanent resident status hampers mobility.

43. The Advisory Committee notes that provisional staff rule 4.5 (d) provides the basis to discontinue international benefits to staff members who become permanent residents of the country of their duty station. Upon enquiry, the Committee was informed that discontinuing the requirement to renounce permanent resident status might have financial consequences for the Organization. The Committee requested, but did not receive, information on the number of staff members who may be affected by provisional staff rule 4.5 (d). **The Advisory Committee recommends that this information, as well as data on the financial impact of removing the**

requirement to renounce permanent resident status, be provided to the General Assembly at the time of its consideration of this question.

44. The Advisory Committee recalls that, under the former Staff Rules, staff members holding 200 and 300 series appointments and serving outside the United States were not required to give up their permanent residency. However, since many of those staff members will now transition to fixed-term appointments they will, as a result, be required to give up their permanent resident status as a prerequisite for continued employment with the United Nations. **The Advisory Committee believes that it is unreasonable to expect serving staff members to make a choice between renouncing their permanent resident status and continuing their employment with the Organization, and therefore recommends that appropriate measures be taken to ensure that those individuals are not disadvantaged by the introduction of the new contractual regime.**

45. **The Advisory Committee is also of the view that, with the increasing use of fixed-term appointments, it may not be entirely fair to require a candidate to give up permanent resident status, a decision that has long-term consequences, so that he or she can take up a position that may last only two or three years. Accordingly, the Advisory Committee recommends that the General Assembly reconsider that requirement and, in the event that there is agreement to remove it, that provisional staff rule 1.5 (c) be deleted.**

46. **The Advisory Committee recommends that, bearing in mind its observations and recommendations in the preceding paragraphs, the General Assembly take note of the provisional Staff Rules set out in document ST/SGB/2009/7.**

III. Practice of the Secretary-General in disciplinary matters and possible criminal behaviour

47. The report on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour, which covers the period from 1 July 2008 to 30 June 2009 (A/64/269), was submitted in response to General Assembly resolution 59/287, in which the Assembly requested the Secretary-General to inform Member States on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with established procedures and regulations. The report provides a broad overview of the administrative machinery in disciplinary matters, a summary of the cases in respect of which the Secretary-General imposed a disciplinary measure during the reporting period and information on the practice of the Secretary-General in cases of possible criminal behaviour.

48. The Advisory Committee recalls that, effective 1 July 2009, a new system of administration of justice came into force at the United Nations. The Committee notes, in particular, that the Joint Disciplinary Committee was abolished on 30 June 2009 and that a summary of the new system as its affects disciplinary matters will be set out in the Secretary-General's next report on disciplinary matters. The Committee has commented in more detail on the new system of administration of justice in its report on that subject (A/64/508).

IV. Activities of the Ethics Office

49. The report of the Secretary-General on the activities of the Ethics Office (A/64/316) was submitted pursuant to paragraph 16 (i) of General Assembly resolution 60/254, in which the Assembly requested annual reporting on the activities of the Ethics Office and the implementation of ethics policies. The report was also submitted in response to resolution 63/250, in which the Assembly requested the Secretary-General to include in his report on the Ethics Office information on the activities of the United Nations Ethics Committee. The report covers the period from 1 August 2008 to 31 July 2009.

50. In paragraph 16 of his report, the Secretary-General indicates that the development of ethical standards is a key function of the Ethics Office (see Secretary-General's bulletin ST/SGB/2005/22). In this connection, the Advisory Committee notes that the Office has assisted the Procurement Division in the development of relevant standards and procedures and in the review of cases involving vendors who are under investigation, or have been accused, convicted or involved in litigation in which they are alleged to have engaged or did engage in fraudulent, corrupt or unethical practices. The Committee further notes that, according to the Secretary-General, the Director of the Ethics Office will assume the chairmanship of the United Nations Senior Vendor Review Committee, which was established on 15 June 2009 in implementation of the measures contained in the report of the Secretary-General on United Nations procurement reform (see A/60/846/Add.5 and Corr.1). The Advisory Committee recalls that the Senior Vendor Review Committee is a pilot project established for a 12-month period. It also recalls that the Ethics Office was conceived of and established as an independent entity. **Accordingly, with regard to the Director of the Ethics Office retaining the chairmanship of the Committee beyond the 12-month pilot period, the Advisory Committee reiterates its previous comment that it would have reservations about any appearance of an ongoing operational role for the Director of the Ethics Office.** The Advisory Committee has commented in more detail on the composition and functions of the Senior Vendor Review Committee in its report on procurement activities (see A/64/501, paras. 25-27).

51. As for the policy on the acceptance of gifts, the Secretary-General indicates in paragraph 22 of his report (A/64/316) that it has been under review with a view to updating the relevant standards, taking into account the global nature of the work of the United Nations and evolving demands and circumstances. The Advisory Committee notes that the Ethics Office has prepared a draft administrative instruction that addresses the disclosure, storage and, as appropriate, disposal of gifts. **The Advisory Committee trusts that the formal consultations on the draft will be completed as soon as possible so that the final version can be promulgated.**

52. Section III.D, of the report provides information on the financial disclosure programme administered by the Ethics Office. The Advisory Committee notes that, while the Secretary-General has partially responded to its earlier recommendation (see A/63/526, para. 94) by providing data on the number of individuals covered by the programme, the number of individuals who have complied with their filing obligations and the number of individuals who have failed to comply with those obligations, he has not given any indication of the reasons for their failure to comply. Upon enquiry, the Committee was informed that such information was not

currently available. **The Advisory Committee reiterates its earlier recommendation that information on reasons for failure to comply with the provisions of the financial disclosure programme be included in future reports on the activities of the Ethics Office.**

53. In the context of its consideration of the proposed programme budget for 2008-2009, the Advisory Committee recommended that the General Assembly request the Secretary-General to conduct an in-depth analysis of the relative advantages or disadvantages, including costs, of conducting the review of the financial disclosure programme in-house as compared to outsourcing arrangements.[4] In paragraph 57 of his report, the Secretary-General indicates that the process of conducting a third-party feasibility study on that issue was initiated in February 2009. The Advisory Committee was informed, upon enquiry, that the study was due to begin in October 2009 and to be completed within two months, at which point the relevant findings and recommendations would be submitted to the General Assembly for consideration. **The Advisory Committee notes the current status of the feasibility study and trusts that it will be completed within the specified time frame.**

54. In paragraphs 59 to 66 of his report, the Secretary-General describes the action taken by the Ethics Office to ensure the effective implementation of the policy on protection against retaliation for reporting misconduct and for cooperation with duly authorized audits or investigations (hereinafter "protection policy") (see ST/SGB/2005/21). In accordance with that policy, once a prima facie case of retaliation has been determined to exist, the burden of proof shifts to the Organization, requiring the Administration to show that it would have taken the same alleged retaliatory action absent the fact that the individual concerned reported misconduct or cooperated with a duly authorized audit or investigation.

55. In paragraph 66 of his report, the Secretary-General states that a serious lacuna in the above-mentioned policy came to light during the 2008-2009 reporting cycle. In brief, after the Ethics Office determined the existence of a prima facie case of retaliation and referred it to the Office of Internal Oversight Services, the latter declined to proceed with an investigation. While the Ethics Office took the view that, in order to implement fully the protection policy set out by the Secretary-General in his bulletin ST/SGB/2005/21, an investigation was necessary in order to allow the Administration to discharge its burden of proof and, if necessary, take corrective measures, the Office of Legal Affairs confirmed that, on the basis of General Assembly resolution 48/218 B, the Office of Internal Oversight Services had the discretionary authority to decide whether or not to investigate a matter. **The arrangements envisaged to address circumstances in which the Office of Internal Oversight Services declines to investigate cases referred by the Ethics Office should be clarified to the General Assembly.**

56. Section V of the Secretary-General's report is entitled "System-wide Code of Ethics for United Nations personnel". It provides information on the genesis and development of the Code of Ethics, the text of which is set out in the annex to the report. According to the Secretary-General, the Code is written as a short, concise statement of the core values and principles as espoused in the Charter of the United Nations. It is meant to be values-based and aspirational in nature, rather than rules-

[4] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 7* and corrigendum (A/62/7 and Corr.1), para. I.17.

based and disciplinary. The Code is not meant to be legally binding or provide sanctions for breaches. The Advisory Committee notes from paragraph 83 of the Secretary-General's report that he initiated a system-wide consultation process on the draft code in August 2008.

57. The Advisory Committee recalls, in this regard, that standards of conduct for the international civil service, developed by ICSC and implemented by organizations within the common system, already exist. The Advisory Committee further recalls that, during its deliberations on conditions of service at its sixty-eighth and sixty-ninth sessions, ICSC discussed the draft code of ethics prepared by the Ethics Committee. Some members of the Commission had questions about the legal status of the code of ethics vis-à-vis the standards of conduct and highlighted the need to harmonize the two documents. With specific reference to the standards of conduct, the Commission decided to request its secretariat to work with organizations and representatives of staff federations to undertake an initial review of the standards of conduct to ensure that they continue to meet the needs of the organizations and to define areas that might need updating.[5]

58. **It is not clear to the Advisory Committee what value the voluntary Code of Ethics would add to the Staff Regulations and Rules, which provide the legal framework governing staff conduct. Further, the work to be undertaken by ICSC (see para. 57 above) could have a bearing on a code of ethics for the United Nations. The Advisory Committee therefore recommends that the General Assembly revert to this issue once the review initiated by ICSC has been completed.**

V. Composition of the Secretariat

59. The Secretary-General's report on the composition of the Secretariat (A/64/352) was submitted pursuant to various General Assembly resolutions concerning human resources management, the most recent of which are resolutions 57/305, 59/266, 60/238, 61/244 and 63/250. The report, which covers the period from 1 July 2008 to 30 June 2009, provides information on important demographic characteristics of the Secretariat and on the system of desirable ranges for the geographical distribution of staff.

60. The Advisory Committee has taken note of the report on the composition of the Secretariat and intends to comment in more detail on the information it contains, as well as on the information to be submitted as part of next year's report on the same subject, during its consideration of human resources matters at the sixty-fifth session. **In the interim, the Advisory Committee urges the Secretary-General to intensify his efforts to achieve the geographical distribution and gender balance targets set by the General Assembly.**

[5] Ibid., *Sixty-fourth Session, Supplement No. 30* (A/64/30), para. 35.

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United Nations Relief and Works Agency for Palestine Refugees in the Near East

Report of the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Rapporteur: Mr. Andreas **Lovold** (Norway)

Summary

The present report of the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) describes the activities of the Group during 2009 and provides a detailed outline of the current financial situation of UNRWA. The Working Group unanimously adopted the report at its meeting on 9 November 2009. As in previous reports of the Group, the present report closes with a number of concluding remarks addressed to all Member States.

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I. Introduction: origin and background of the Working Group

1. The Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by the General Assembly under resolution 2656 (XXV) to study all aspects of the financing of the Agency. In that resolution, the Assembly requested the Working Group to assist the Secretary-General and the Commissioner-General of UNRWA in reaching solutions to the problems posed by the Agency's financial crisis.

2. At its twenty-fifth session and all those that followed, the General Assembly considered the reports submitted to it by the Working Group (in 2008, A/63/375)[1] and adopted resolutions commending the efforts of the Working Group and requesting it to continue them for a further year (General Assembly resolution 63/93).

3. The Working Group consists of the representatives of France, Ghana, Japan, Lebanon, Norway, Trinidad and Tobago, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Chairman of the Working Group is Ertuğrul Apakan of Turkey.

II. Activities of the Working Group during 2009

4. During 2009, the Working Group was convened on an exceptional basis by its Chair, following a letter from the Commissioner-General dated 13 April 2009 concerning the resources crisis faced by the Agency as it approached the end of its three-year organizational development programme, in December 2009, necessitating additional support from the United Nations regular budget. In response, the Working Group held three meetings, on 19 and 25 May 2009, and on 25 June 2009, when it adopted a report to be sent to the Fourth Committee of the General Assembly. With respect to its regular annual session, the Working Group met first on 14 September 2009, when the Director of the UNRWA Representative Office briefed the Working Group on the Agency's financial situation and developments facing the Agency. The Working Group held seven meetings during its regular session, agreeing on and adopting the present report on 9 November 2009.

III. Financial situation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

5. The United Nations Relief and Works Agency for Palestine Refugees in the Near East cash and in kind regular budget for the biennium 2008-2009 amounts to $1,093.2 million, of which the cash component was $541.8 million for 2008 and $545.6 million for 2009. In mid-2008, UNRWA revised the cash component of its regular budget for that year to $546.4 million to cover unbudgeted additional costs, including salary increases, resulting, inter alia, from the global food and energy crises. The funding gap for 2008 was $97.1 million, as UNRWA's regular budget income for 2008 amounted to $449.3 million ($430 million in donor contributions, and $19.3 million in transfers from the United Nations assessed contributions

[1] For the report of the Fourth Committee on its consideration of the most recent report of the Working Group, see A/63/400.

budget to cover the costs related to 119 international posts). As at 14 September 2009, the anticipated funding gap for the Agency's budget for 2009 was $84 million.

6. The capital requirements of UNRWA programmes, as well as expenditure related to environmental health improvements and shelter rehabilitation, are contained chiefly in the Agency's project budget. These requirements include construction and expansion of schools, health centres and water and sanitation facilities, and camp improvement activities in general. The project budget for 2009 is $57.6 million, slightly higher than the $56.8 million sought last year. As at 14 September 2009, only $7.7 million had been received, and there was no expectation of receiving additional funds later in the year, leaving an anticipated deficit of over $50 million. The Working Group expressed concern about the large scale of the Gaza reconstruction and rehabilitation requirements after the Israeli military operation that began on 27 December 2008, and after the fighting in Gaza that continued until 18 January 2009. The Working Group remained concerned that, in the light of the constraints imposed by inadequate physical facilities on the Agency's ability to deliver quality services, recurrent project budget deficits would adversely affect regular UNRWA services for the refugees.

7. The Working Group was informed by UNRWA at its 14 September 2009 meeting that the Advisory Committee on Administrative and Budgetary Questions had reviewed UNRWA's section of the United Nations proposed budget for the biennium 2010-2011 in June 2009, which related to the costs of the Agency's international staff funded by the United Nations. At that meeting, the Commissioner-General of UNRWA informed the Advisory Committee that the growth in scale and complexity of the refugees' needs and intensifying stakeholder demands for greater programme and management effectiveness had over time made the Agency's chronic financial and human resource limitations untenable. The Advisory Committee was also informed that donor funds for the organizational development programme would expire at the end of 2009, making inclusion in the United Nations regular budget for the biennium 2010-2011 of 14 additional international posts, which are yet to be approved, a prerequisite for the long-term success of UNRWA's reform programme.[2] UNRWA is urgently seeking support from Member States in this regard. Of the 14 remaining posts, the United Nations Secretariat, in early 2009, proposed only three in the United Nations regular budget for the biennium 2010-2011. The Working Group was informed by UNRWA that in its report dated 15 October 2009, the Advisory Committee had recommended approval of UNRWA's full programme budget for the biennium 2010-2011, comprising $1.7 billion. It had also recommended acceptance of the United Nations Secretariat's proposal to add three new P-4 posts for the 2010-2011 biennium. The Working Group noted the Agency's long-standing concerns about the effects of understaffing on its ability to meet the demands of all stakeholders: donors, host authorities and the refugees themselves. Furthermore, compared with other similar United Nations organizations, UNRWA senior management structures are undergraded, creating difficulties for the Agency in recruiting and retaining sufficiently experienced senior international staff. In this regard, the Working Group

[2] The Agency requested 20 new posts to be phased into the budget over two bienniums, 10 posts in the biennium 2008-2009 and 10 thereafter. Six were approved by the General Assembly for 2008-2009, and three more have been proposed for the United Nations 2010-2011 budget; the 11 remaining posts are still being sought.

highlighted the importance of the overall institutional strengthening of the Agency in the coming period.

8. The overall financial context in which UNRWA operates has remained difficult during 2009 owing to two main factors. Firstly, the cost of doing business within the Agency's areas of operation has risen significantly over the past 12 months. As host Governments have sought to protect their own employees from rising costs, public sector pay increases have put pressure on UNRWA to raise salaries for its own staff, as a result of the standing practice that salaries should remain roughly on a par with those paid by local Governments. Outbreaks of labour unrest have erupted during this year among UNRWA employees because of the Agency's reluctance to increase remuneration further at this time. Secondly, and of most consequence, UNRWA's working capital, which has been used to prevent shortfalls of income against expenditure for successive years since 2005, is now completely exhausted. In consequence, it faces a particularly grave outlook in the first quarter of 2010 as, during the first quarter, the inflow of donor contributions is traditionally low. The Agency renewed its appeal to donors to make additional efforts to fully fund the General Fund budget, on the grounds that UNRWA represents the principal source of basic services for the Palestine refugee population. The continued commitment of the international community to the refugees remains essential, in the absence of a just and durable solution to their problem and in the light of the continuing conflicts in the region, which have had devastating economic and social consequences.

9. As at 30 June 2009, the Palestinian Authority owed approximately $27 million in value added tax reimbursements to the Agency, more than double the $12.8 million figure recorded at the end of 2006. The inability of the Authority to make good on its past commitments to eliminate this long-standing debt has contributed to the Agency's serious deficit in its 2009 regular budget. While expressing understanding of the Palestinian Authority's own straitened financial circumstances, the Working Group called on the Authority to address this issue.

10. UNRWA was also concerned about port and related transit charges and security procedures for humanitarian goods it imported through Israel. The Israeli authorities continued to impose transit charges on shipments entering the Gaza Strip, forcing UNRWA to pay $122,640 in 2008 and $241,040 between 1 January and 30 June 2009. In the Agency's view, the charges are a direct tax from which it ought to be exempt under the 1946 Convention on the Privileges and Immunities of the United Nations. The Agency also incurred logistical charges of some $250,000 for nine United Nations armoured vehicles which were blocked at Ben Gurion airport for several months pending import approval by the Government of Israel. The vehicles were needed to enhance United Nations staff safety and security in the Gaza Strip. The Agency considers that the Government's failure to approve the import of the vehicles in a timely manner is contrary to the 1946 Convention. The normal route for UNRWA humanitarian shipments into the Gaza Strip is through the Karni crossing. Citing security considerations, throughout 2008 and 2009 the Israeli authorities closed the Karni crossing for all containers. All UNRWA shipments were required to enter through the smaller Sofa or Kerem Shalom crossings, both of which are unequipped to handle containers and were often closed for imports. Largely owing to the closure of Karni and the requirement from June 2007 to palletize all container shipments, the Agency's excess operating charges in 2008 for storage, demurrage, transportation and palletization were some $2.17 million. In the first six months of 2009 alone, total excess charges for storage, demurrage,

transportation and palletization amounted to some $2.85 million, more than the entire amount for the previous year. The Agency considers that, for substantial periods, the throughput of goods was not consistent with Israel's obligations under the Comay-Michelmore Agreement of 1967 and Israel's obligations under international humanitarian law. In this regard, the Working Group called on all parties concerned to facilitate the mission of UNRWA to provide humanitarian assistance to the Palestine refugee population. Separately, since 14 June 2007, importation into the Gaza Strip of construction materials has been almost entirely prohibited. As a consequence, UNRWA was compelled to suspend or halt the tendering or completion of construction and infrastructure projects. Although the Israeli authorities permitted some materials to enter to enable the Agency to construct temporary facilities for its Summer Games, incomplete UNRWA projects worth $76 million were still pending at the end of 2008 as a consequence of the prohibition. The Working Group, emphasizing the need to ensure the sustained and regular flow of goods and people through the Gaza crossings, recognized the vital role played by UNRWA in providing humanitarian and economic assistance within Gaza.

11. The Working Group acknowledged with satisfaction the considerable progress made since 2006 in implementing the organizational development programme, which seeks to strengthen UNRWA's management and human resource capacity, enhance its effectiveness through improved planning, needs-assessments and programme evaluations, and further implementation of a results-based management and programme culture. As at 31 August 2009, pledges and receipt of funds for the organizational development programme had reached $25.1 million, out of an anticipated total requirement of $26.8 million, a healthy sign of the importance that donors attach to the programme. In this regard, the Working Group acknowledged with appreciation the leadership of Commissioner-General Karen Koning AbuZayd and Deputy Commissioner-General Filippo Grandi, who oversaw the Agency's reform programme. To ensure that reforms in progress were sustained, the Working Group noted that UNRWA was seeking a further $17 million from bilateral donors to implement an enterprise resource planning system. That system could significantly improve the quality of information based on which decisions are made in the Agency, increase the speed of internal processes, empower managers who are closer to the delivery of services and strengthen the connection between responsibility, delegation and accountability. The Agency informed the Working Group that certain activities undertaken under the organizational development programme would continue into 2010. Noting its importance for the Agency's managerial transformation, the Working Group welcomed efforts undertaken over the past year to establish clear indicators to measure the impact of UNRWA programmes. It also urged UNRWA to continue to cooperate closely with the Secretariat and other United Nations agencies that have been through similar reform efforts in order to benefit from their experiences and achieve possible synergies, with the potential for cost savings. Finally, it encouraged UNRWA to take measures aimed at ensuring that the pace and effect of management reforms were sustained after the end of the formal organizational development process.

12. In December 2008, UNRWA launched an appeal for $275.3 million to address the emergency needs of Palestine refugees in the occupied Palestinian territory. A supplementary appeal for Gaza was issued in February 2009. In total, UNRWA emergency funding needs for 2009 in the occupied Palestinian territory amount to

$456.7 million. This figure breaks down as: $85 million for the West Bank, as reflected in the Agency's 2009 Emergency Appeal; $371.3 million for Gaza, in line with the updated quick response plan of July 2009; and $400,000 to cover additional needs at UNRWA headquarters. By 6 September 2009, UNRWA had received pledges totalling $307.6 million, covering 67 per cent ($247.3 million) of its funding needs in Gaza and 71 per cent ($60.3 million) in the West Bank. In both fields of operation, emergency programmes provide, inter alia, badly needed food aid, temporary employment and cash assistance, to mitigate the worst impacts of the protracted crisis on poor families. They also seek to guarantee access to essential services, such as primary and environmental health, and to address psychosocial needs through community mental health programmes. In addition, through systematic monitoring and reporting of conditions, the emergency programmes observe human rights concerns and attempt to ensure there is no abuse of UNRWA facilities. Living conditions for the 1.1 million registered refugees — approximately two thirds of the total population — have continued to decline as a consequence of the very tight economic and movement restrictions imposed on the Gaza Strip, and of the fighting in December 2008 and January 2009, which have created additional demands for UNRWA services. Notwithstanding the availability of significant funds, pledged at the Sharm el-Sheikh donor conference in March 2009, since the end of the fighting there has been little substantive relaxation on the very tight restrictions, stymieing recovery and reconstruction efforts.

13. The fierce conflict from May to September 2007 in and around the Nahr el-Bared refugee camp in northern Lebanon, between the Lebanese Army and a militant group known as Fatah al-Islam, resulted in the destruction of the entire camp. Severe damage was also caused to adjacent areas. The task of rebuilding Nahr el-Bared and caring for some 27,000 displaced refugees is one of the largest ever undertaken by UNRWA. Two years after the fighting ended, over a third of those displaced have been able to return to their original homes in the adjoining area, or else have been rehoused by UNRWA in temporary shelters and collective centres in the area. The majority, however, are still living in rented temporary accommodation, including in garages, in the adjacent areas or else in and around Beddawi camp near Tripoli, Lebanon. Donors have responded quite generously to the three appeals launched so far by UNRWA to support those displaced. The Relief and Early Recovery Appeal, which originally covered a 16-month period from September 2008 to the end of 2009, sought $42.7 million; by August 2009, $25.2 million (59 per cent) had been received. Assistance for temporary accommodation, food and hospitalization, as well as other regular expenses such as water and power supplies and maintenance of the temporary shelter facilities, estimated at $32 million for the period 2009-2011, must continue until the camp is rebuilt. Failure to cover these costs could jeopardize the entire project. At the Vienna donor conference held on 23 June 2008, a joint appeal was launched for $445 million over a three-year period to 2011, to cover the reconstruction of the camp, repairs in the adjacent areas and improvements in the surrounding Lebanese municipalities. The UNRWA component of this appeal has since been revised upwards from $282.1 million to $328 million for a period of four years, as a result of additional costs identified in the interim. Including funds received through the World Bank-administered multi-donor trust fund, as at 31 August 2009, firm pledges received for the reconstruction have totalled $101.3 million, representing 30 per cent of the amount required. While this amount is sufficient to cover the construction of residential and commercial units and related infrastructure outlined in packages 1 and 2 and most of package 3, as

well as that of some UNRWA schools, the balance of $226.7 million still needs to be raised. (The camp has been divided into eight construction "packages" to enable rebuilding to proceed in line with the availability of funding.) Rubble removal and demining will end by November 2009; so far, over 10,000 items of unexploded ordnance have been found. The Working Group called upon all donors, particularly countries in the region, to lend their full support to the reconstruction and relief operations until the camp is rebuilt, as the failure to do so might have serious consequences for the security of the refugees and the stability of Lebanon. In addition, the Working Group encouraged UNRWA to continue with its comprehensive camp improvement initiative, which seeks to upgrade living conditions in the other 11 Palestine refugee camps in Lebanon, a project fully supported by the Government.

IV. Concluding remarks

14. The Working Group continues to believe that UNRWA plays a vital role in providing assistance to the Palestine refugees as well as in preserving the stability and security of the region. To assist in meeting this strategic goal, adequate funding of the Agency's programmes, in accordance with the changing needs of the refugee community and in line with the comparable level of services provided by host authorities to their own citizens, is essential. In this regard, the Working Group welcomes UNRWA's strengthened focus on strategic planning, monitoring and evaluation of programmes and its commitment to results-based management, ensuring the most effective use of donor funds and a stronger emphasis on well-defined outcomes.

15. In view of the deep humanitarian crisis in the occupied Palestinian territory, the Working Group recognizes the essential humanitarian role played by UNRWA emergency operations in alleviating the hardship of the refugees and in preventing an even greater decline in their living conditions. It thus urges the international community to fully fund the Agency's emergency appeals for 2009.

16. The Working Group expresses concern about the continued tight restrictions on the movement of UNRWA staff and humanitarian goods into and out of the occupied Palestinian territory, and between its parts. It calls on the Israeli Government to accord the Agency free and unfettered access. The Working Group supports opening the Gaza crossings to allow the unimpeded flow of humanitarian aid, commercial goods and persons to and from Gaza, consistent with Security Council resolution 1860 (2009). The Working Group also calls for urgent implementation of the United Nations proposal of June 2009, prepared under the auspices of the United Nations Special Coordinator for the Middle East Peace Process, for a pilot group of reconstruction projects implemented by UNRWA and the United Nations Development Programme in the areas of housing, education and health, to be enabled to proceed, as donor funds committed to these projects in prior years have remained unutilized.

17. The Working Group notes with serious concern the very large funding gap anticipated for UNRWA's regular budget in 2009 and reiterates that it is the responsibility of the international community to ensure that UNRWA services are maintained at an acceptable level in quantitative and qualitative terms and to ensure that funding keeps pace with the changing needs of the refugee population.

18. The Working Group commends the Commissioner-General and all UNRWA staff for their tireless efforts over the past year to maintain the services of the Agency under very difficult operational circumstances. It encourages the Commissioner-General to continue her fund-raising efforts and her commitment to keeping major donors and host authorities informed and involved, opening new avenues of support and funding. The Working Group is gratified by the support of a growing number of non-traditional donors, in particular those contributing to the 2009 emergency appeal for the Gaza Strip, and encourages UNRWA to continue its efforts to widen the donor support base. It acknowledges with appreciation the significant project aid provided to the Agency over the past year by donors, including certain important Arab donors.

19. The Working Group calls for the early and complete fulfilment of outstanding donor pledges to UNRWA. It also takes note of the importance for the Agency's planning purposes of early payment of pledges, coupled, where possible, with multi-year commitments of funds. The Working Group notes with regret that the budget for the biennium 2008-2009 was seriously underfunded. In 2008, contributions reached only $449.3 million, 82 per cent of a budget totalling $546.4 million. In 2009, the Agency's cash income was projected to be $446 million, 19 per cent below the required amount.

20. The humanitarian problems faced by the Palestinian refugees today must be addressed as a shared international responsibility pending a final and comprehensive settlement of the Israeli-Palestinian conflict in accordance with international law, including relevant United Nations resolutions. The services provided by UNRWA must be viewed as the minimum required to enable the refugees to lead productive lives. Any reduction in those services, in combination with the constantly increasing number of the refugees, would not only unfairly deprive them of the minimum level of support to which they are entitled, but could also have a destabilizing effect on the entire region. Above all, the Working Group expresses the hope that the international support for UNRWA embodied in the resolutions adopted each year by the General Assembly, in which the Assembly recognizes the importance of the work of the Agency, will be translated in practice into increased support to ensure the continuation of the Agency on a sound financial basis.

21. The Working Group strongly urges all Governments to bear in mind the foregoing considerations when deciding upon the level of their contributions to UNRWA for 2009 and 2010, and once again:

(a) Urges those Governments that have not yet contributed to UNRWA to do so on a regular basis;

(b) Urges Governments that have so far made only relatively small contributions or else contributions that have not kept up with increased needs to raise the level of their support;

(c) Urges Governments that in the past have made generous contributions to UNRWA to continue to do so in a timely manner and to strive to increase them;

(d) Urges Governments that traditionally have shown special interest in the welfare of the Palestine refugees, both in the region and beyond, to begin contributing to UNRWA or to increase their contributions;

(e) Urges Governments to fully fund UNRWA's budget for the biennium 2010-2011, to ensure that the real value of contributions to the Agency is maintained, and to ensure that donor support for emergency-related and special programmes does not in any way decrease contributions to or divert them from its regular programme;

(f) Urges donor Governments, where possible, to provide multi-year funding to allow UNRWA to better plan its activities.

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Security Council
Sixty-fourth year

Identical letters dated 9 November 2009 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I transmit to you herewith a statistical summary of Israeli violations committed from 15 to 31 October 2009 (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the sixty-fourth session of the General Assembly, under agenda item 15, and of the Security Council.

(*Signed*) Nawaf **Salam**
Ambassador
Permanent Representative

09-60149 (E) 121109 121109

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Annex to the identical letters dated 9 November 2009 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

Israeli violations, acts of aggression and other activities from 15 to 31 October 2009

Air violations

On 15 October 2009:

- Between 0755 and 2100 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah and flying north as far as to the east of Tyre. It circled over the South, the Shuf and Beirut and its suburbs before leaving over Naqurah;

- At 2025 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South Regions before leaving over Naqurah at 0630 hours on 16 October 2009.

On 16 October 2009, at 1855 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah and flying north as far as Jazzin. It circled over the South before leaving over Rumaysh at 0740 hours on 17 October 2009.

On 17 October 2009, at 1615 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over Rumaysh at 0800 hours on 18 October 2009.

On 18 October 2009:

- Between 0800 and 1735 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Rumaysh and flying north. It circled over the South before leaving over Naqurah;

- At 1240 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over Naqurah at 0700 hours on 19 October 2009;

- At 2345 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over Naqurah at 0730 hours on 19 October 2009.

On 19 October 2009, at 0800 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over 'Alma al-Sha'b at 0020 hours on 20 October 2009.

On 20 October 2009, at 1250 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over 'Alma al-Sha'b at 0300 hours on 21 October 2009.

On 22 October 2009:

- Between 0615 and 1645 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over 'Alma al-Sha'b and flying north as far as Nabatiyah. It circled over the South before leaving over Naqurah.

On 25 October 2009, at 0750 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over 'Alma al-Sha'b. It circled over Beirut before leaving over Naqurah at 0800 hours on 26 October 2009.

On 26 October 2009, between 0710 and 1330 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah. It circled over the South before leaving over 'Alma al-Sha'b.

On 27 October 2009

At 2010 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Yarun and flying north as far as Nabatiyah. It circled over the South before leaving over Naqurah at 0300 hours on 28 October 2009.

At 2015 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Yarun and flying north as far as Nabatiyah. It circled over the South before leaving over Naqurah at 0300 hours on 28 October 2009.

On 28 October 2009:

Between 0555 and 1455 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace, entering over Naqurah and flying north. It circled over the South before leaving over Naqurah.

Between 1015 and 1100 hours, four Israeli enemy military aircraft violated Lebanese airspace, entering over the occupied Shab'a Farms and flying north. They circled over the South, the Western Bekaa and Beirut before leaving over 'Alma al-Sha'b.

On 29 October 2009, between 1020 and 1135 hours, two Israeli enemy military aircraft violated Lebanese airspace, entering over the Shab'a Farms. They circled over all of Lebanon before leaving over Rumaysh.

Sea violations

On 16 October 2009:

Between 0145 and 0250 hours, in the open sea off Ra's al-Naqurah inside occupied Palestinian territorial waters, an Israeli enemy military launch on five occasions directed a searchlight for five seconds in the direction of Lebanese territorial waters.

At 2226 hours, the Israeli enemy, from its position at Ra's al-Naqurah, directed a searchlight for 15 seconds, some 100 metres into Lebanese territorial waters in the region of buoy No. 7.

On 20 October 2009, at 2140 hours, the Israeli enemy directed a searchlight from its position at Ra's al-Naqurah in the direction of the line of buoys and moved it over the Ra's al-Naqurah position for 20 seconds.

On 28 October 2009, at 2220 hours, in the open sea inside occupied Palestinian territorial waters off Ra's al-Naqurah, an Israeli enemy military launch directed a searchlight for five seconds in the direction of Lebanese territorial waters.

Land violations

On 24 October 2009, between 1320 and 1345 hours, an Israeli enemy motorized patrol stopped opposite the Fatima gate and its personnel proceeded to shout curses and obscene language at Lebanese civilian passers-by on the Kafr Kila road.

On 27 October 2009, at 1840 hours, between the towns of Hula and Mays al-Jabal, a missile of unknown type and calibre was fired in the direction of the occupied Palestinian territories. The Israeli enemy responded from one of its positions inside the occupied territories with nine shells, two of which did not explode, that landed in the area between the towns of Hula and Mays al-Jabal.

On 30 October 2009, at 2005 hours, an Israeli enemy Hummer vehicle stopped on the Misgav 'Am road inside the occupied Palestinian territories and directed a searchlight in the direction of the Lebanese Army checkpoint at 'Adaysah and sounded a warning siren for one minute.

On 31 October 2009, at 1945 hours, inside the occupied Palestinian territories opposite the Fatima gate a hostile motorized patrol drew up and its personnel got out and proceeded to inspect the technical fence. They left at 2000 hours. Immediately thereafter, an Israeli enemy Hummer jeep drew up at the same spot, and its personnel proceeded to direct their weapons towards and shout curses at a Lebanese Army soldier on sentry duty. He directed his own weapon towards them and the other troops at his position went on a state of alert. The hostile patrol left at 2015 hours.

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Identical letters dated 9 November 2009 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I transmit to you herewith a statistical table of the violations committed by Israel by air, sea and land during the month of October 2009 (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the sixty-fourth session of the General Assembly, under agenda item 15, and of the Security Council.

(*Signed*) Nawaf **Salam**
Ambassador
Permanent Representative

09-60162 (E) 121109 121109

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Annex to the identical letters dated 9 November 2009 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

Statistical table showing Israeli violations during October 2009

Air violations					*Land violations*					
Military jet	*Reconnaissance*	*Helicopter*	*Total*	*Sea violations*	*Military acts of aggression*	*Field violations*	*Other*	*Total*	*Overall total*
				Crossing of territorial waters, and firing of automatic-weapons rounds, flares and flare shells over territorial waters	Artillery shelling, detonation of explosives, listening devices	Shining of searchlights, inappropriate gestures, interference in telephone network	Setting up of installations inside Lebanese territory		
7	26	—	33	9	3	19	1	23	65